DOCUMENT RESUME

ED 445 485 EF 005 690

AUTHOR	Mullinax, Don
TITLE	Belmont Learning Complex: Report of Findings.
INSTITUTION	Los Angeles Unified School District, CA.
REPORT NO	OSI-99-12
PUB DATE	1999-09-13
NOTE	206p.; For related document, see EF 005 691.
AVAILABLE FROM	For full text: http://www.dailyneews.com/extra/spec/.
PUB TYPE	Reports - Evaluative (142)
EDRS PRICE	MF01/PC09 Plus Postage.
DESCRIPTORS	*Administration; *Criticism; *Educational Facilities Planning; Elementary Education; Legal Responsibility; Public Schools; *School Construction; *Summative Evaluation
IDENTIFIERS	*Los Angeles Unified School District CA

ABSTRACT

This report provides findings of fact on the development of the Belmont Learning Complex of the Los Angeles Unified School District (LAUSD), and contains recommendations to remedy identified deficiencies in the LAUSD's current policies and procedures for siting and developing school buildings. The report addresses the following issues: (1) the acquisition, environmental assessment, and remediation of all land associated with Belmont; (2) alleged existence of conflicts of interest relating to Belmont; (3) the selection, negotiation, and contracting process for the development and construction of Belmont; and (4) pursuit of legal rights and remedies including restitution in the event of the discovery of any wrongdoing regarding Belmont. It includes findings regarding former LAUSD school boards, certain state agencies, the present and former LAUSD professional staff, and the LAUSD's professional consultants or vendors on Belmont. Recommendations include reforming school board practices, developing new environmental/public health and safety policies, reviewing and restructuring professional staff functions, disciplining certain LAUSD employees, pursuing legal action against LAUSD's professional consultants or vendors, negotiating with and/or pursuing legal action against the Belmont developer, reforming the safety team, and implementing all requirements imposed by the California Department of Toxic Substances Control regarding the completion of Belmont. (GR)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 445 485

INTERNAL AUDIT AND SPECIAL INVESTIGATIONS UNIT

REPORT OF FINDINGS

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☒ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.

- Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

LOS ANGELES UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

Don Mullinax

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

1

BELMONT LEARNING COMPLEX

Submitted by
Don Mullinax, Director

Available at:
http://www.dailynews.com/extra/spec/belmont/belmont.asp

OSI 99-12

SEPTEMBER 13, 1999

EF 005 690

BEST COPY AVAILABLE

Los Angeles Unified School District
Internal Audit and Special Investigations Unit
355 SOUTH GRAND AVENUE, SUITE 300, LOS ANGELES, CA 90071
TELEPHONE: (213) 633-8350 FAX: (213) 633-8853

VICTORIA M. CASTRO
VALERIE FIELDS
GENETHIA HUDLEY HAYES
JULIE KORENSTEIN
MIKE LANSING
DAVID N. TOKOFSKY
CAPRICE YOUNG
Members of the Board

RUBEN ZACARIAS
Superintendent of Schools

DON MULLINAX
Director

September 14, 1999

BY HAND DELIVERY

Members of the School Board
Los Angeles Unified School District
450 North Grand Avenue
Los Angeles, California 90012

Dear Board Members:

This is our first of two reports on the investigation of the Belmont Learning Complex ("Belmont"). The report responds to a motion adopted by the Board of Education on February 23, 1999, and was completed on September 13, 1999.

The report contains specific findings of fact regarding the development of the Belmont project. The report also contains recommendations to remedy identified deficiencies in the Los Angeles Unified School District's current policies and procedures for siting and developing school buildings. I look forward to discussing them with you.

Thank you for your confidence and support for this Office as we proceed with our work.

Sincerely,

Don Mullinax

Don Mullinax
Director

Attachments

ACKNOWLEDGEMENTS

The Internal Auditor would like to acknowledge the thorough and capable assistance of his own staff, as well as the work of the firms and their employees who assisted in the preparation of this *Report of Findings*:

Internal Audit and Special Investigations Unit

Janis Eiler, chief investigator, Winston Rojas, senior auditor, Norma Valenciano, senior auditor, Conrad Dungca, senior auditor, Uly Peregrino, senior auditor, Roger Datu, senior auditor.

Preston Gates & Ellis LLP

From the Los Angeles office of this firm: attorneys Roger Lane Carrick, Angela E. Dotson, James K. Kawahara, and David B. Sadwick; legal assistants Beto Chavez and Lee Paige; and legal secretaries Kim Burgo and Gwen Thomas.

Investigators And Consultants

Fred V. Ahles, investigator, Fred V. Ahles & Associates, Inc.; William C. Fleming, investigator, Information & Investigative Services; Joseph Chefalo, investigator; Marty Kasman, investigator, Jack Orswell, investigator, Michael L. Walt, investigator, Orswell & Kasman, Inc./ Orswell/Walt and Associates; C. Wayne Owens, investigator, Robert Taylor, investigator, Owens & Associates Investigations; Norman I. Wight, investigator, Darwin D. Wisdom, investigator and forensic specialist, Wisdom, Wight and Associates; and David Leu, Ph. D., environmental science and policy, The Leu Group.

TABLE OF CONTENTS

PAGE

LETTER OF TRANSMITTAL TO THE SCHOOL BOARD

ACKNOWLEDGEMENTS

EXECUTIVE SUMMARY OF THE INTERNAL AUDITOR'S FINDINGS ON THE BELMONT LEARNING COMPLEX i

Background On The Development Of These Findings 1

Level Of Effort Expended To Produce These Findings 1

Summary Of The Internal Auditor's Findings 2

Findings Regarding The Former LAUSD School Boards 2

Findings Regarding Present And Former LAUSD Professional Staff 3

Findings Regarding Certain State Agencies 5

Findings Regarding The LAUSD's Professional Consultants Or Vendors On Belmont 5

Summary Of The Internal Auditor's Principal Recommendations 6

School Facilities' Function 7

Environmental Compliance Function 7

General Counsel Functions 8

Recommended For Discipline 9

Referrals To Prosecutorial Agencies 11

CHAPTER 1 THE ROLE OF THE INTERNAL AUDITOR AND THE NATURE OF THE BELMONT INVESTIGATION 12

A. School Board's Authorizing Resolution 12

B. Purpose Of This Report of Findings 12

C. Scope And Methodology Of This *Report of Findings* 13

CHAPTER 2 WHY DOES BELMONT FEEL LIKE HISTORY REPEATING ITSELF? 15

A. Park Avenue School "Seepage" In 1989 15
B. Park Avenue Children And Parents Complain 15
C. Cudahy Elected Officials Complain 16
D. David Koch of LAUSD Testifies 17
E. Environmental Consultant Angelo Bellomo Testifies 18
F. Government Environmental and Health Officials Testify 18
G. Senator Torres Authors SB 2262 In 1990 19
H. AB 928 -- LAUSD Attempts To "Clarify" SB 2262 21
I. AB 1024 -- LAUSD Modifies Eminent Domain Law to Account for Hazardous Materials 23
J. Belmont -- The Ghost Of Park Avenue School 23

CHAPTER 3 LAUSD ORGANIZATION AND RESPONSIBILITIES 25
A. School Board 25
B. Office Of The Superintendent 25
C. Divisions 26
D. Branches 27
E. Office Of Planning And Development 28

CHAPTER 4 THE SCHOOL SITE SELECTION PROCESS 30

CHAPTER 5 SELECTED CALIFORNIA LAWS GOVERNING SCHOOL FACILITY ACQUISITION 32
A. The California Education Code 32
  1. Development, Construction and Funding Options For Belmont 32
  2. Leroy F. Greene Facilities Act Of 1988 34
  3. The Role Of The California Department Of General Services 35
  4. LAUSD And The State Department 35
  5. The Unique Requirement of Education Code §17213 36

6. The State Department's Safety Policy 38

B. Environmental Statutes Implicated by Belmont 39

1. California Environmental Quality Act 39

a. The Pre-Application Phase 39

b. The Application Phase 40

c. The Review Phase 40

2. CERCLA -- The Federal Superfund Law 41

3. Carpenter-Presley Tanner Hazardous Substances Account Act 42

4. Federal Resource Conservation And Recovery Act 42

5. California's Hazardous Waste Control Law 43

6. California's Duty To Disclose The Presence Of Hazardous Substances On Real Property 43

7. California's Duty To Report Hazardous Substance Spills 43

8. California's Public Property Owner's Duty To Report Hazardous Waste 44

9. California's Hazardous Property Designation Statute 44

CHAPTER 6 THE BELMONT LEARNING COMPLEX SITE GEOGRAPHY AND BACKGROUND 45

A. Two Stage Site Acquisition 45

B. Site History 45

C. Oil Field Operations 46

D. Topography 46

E. Belmont Project Areas 47

F. Previous Environmental Sampling 47

CHAPTER 7 THE SEARCH FOR A BELMONT SCHOOL SITE 48

A. A Belmont Middle School At Temple And Beaudry Site 48

B. Environmental Site Investigation Of Middle School Temple And Beaudry SiteCompared To The Same Process At The Belmont New Elementary #3 Site 49

1. Site Assessment/Due Diligence For The Belmont Middle School Site 49

2. Site Assessment/Due Diligence For Belmont New Elementary #3 Site 50

3. California Environmental Quality Act Compliance At Belmont 51

4. Certification Of Environmental Impact Report For The Temple And Beaudry Middle School Site 56

5. Search For A New Belmont High School Site 57

CHAPTER 8 THE 24 ACRE SHIMIZU SITE NEAR FIRST AND BEAUDRY AVENUE 61

A. The Role Of David Cartwright And The O'Melveny Law Firm 61

B. The Shimizu Deal 63

C. The CEQA Mitigated Negative Declaration 64

D. The Shimizu Purchase And Sale Agreement 65

E. The Disputed Phase II Report 67

CHAPTER 9 THE BELMONT LEARNING COMPLEX CONCEPT 71

A. Academy High School 71

1. Mixed Use Development 71

CHAPTER 10 REQUEST FOR QUALIFICATIONS AND REQUEST FOR PROPOSAL PROCESS FOR DEVELOPMENT OF BELMONT 73

A. Request For Qualifications 73

1. Request For Proposals -- Phase I 74

2. Request For Proposals -- Phase II 75

CHAPTER 11 CONTRACTUAL RELATIONSHIPS BETWEEN LAUSD AND TEMPLE BEAUDRY PARTNERS LLC 78

A. The RFP Evaluation Team's Unanimous Recommendation Was Forwarded To The Board And Adopted 78

B. Temple Beaudry Partners Design Oversight Committee 78

8

C. Disposition And Development Agreement 81

D. Internal Auditor's Comments On The DDA 84

CHAPTER 12 ENVIRONMENTAL ASSESSMENT OF THE BELMONT LEARNING COMPLEX – 1995-1996 89

A. The CEQA Process In 1995-1996 89

B. Preparation of Notice of Preparation 90

C. Failure Of The Governor's Office Of Planning And Research To Circulate NOP 91

D. The Draft Environmental Impact Report Process 91

E. The Final Environmental Impact Report Process 92

F. LAUSD School Board Approval 95

CHAPTER 13 REMEDIATION, MITIGATION, GRADING AND CONSTRUCTION AT BELMONT 97

A. Re-abandonment Of Oil Wells And Replacement Of The Suplin Well 97

B. Removal Of Underground Tanks And Remediation Of Contaminated Soil 101

1. Tanks At First And Beaudry Avenue 102
2. Tanks Located At 1200 Colton Street 103
3. Tanks At Temple And Beaudry Avenues 104
4. Methane Barrier System -- LAUSD's Early Views 104
5. DOGGR's Contrary Views 105
6. LAUSD's Final EIR On Methane -- Is It Safe? 105
7. Temple Beaudry Partners Employs Law-Crandall To Test For Methane 106
8. John Sepich's Initial Views On Methane At Belmont 108
9. Temple Beaudry Assurances On Methane Based On Law-Crandall's Report 109
10. Temple Beaudry Fails To Inform Fire Department Of New Methane Findings 109
11. Excavation And Removal Of Contaminated Soil 110

C. Compliance With Regulatory Permits 115

1. Air Quality Permit Compliance 115

2. California's Porter-Cologne Water Quality Control Law Requirements 116

a. First Waste Discharge Requirements Monitoring Report 117

b. Second Waste Discharge Requirements Monitoring Report 117

D. Internal Auditor's Comments 118

CHAPTER 14 INVESTIGATIONS OF BELMONT BY THE STATE JOINT LEGISLATIVE AUDIT COMMITTEE 121

CHAPTER 15 INVOLVEMENT OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL -- 1998 TO PRESENT 123

CHAPTER 16 CONFLICT OF INTEREST ALLEGATIONS 125

A. O'Melveny & Myers And Kajima International -- A Legal Conflict Of Interest? 125

B. O'Melveny & Myers and Kajima International -- A Financial Conflict of Interest? 126

1. Factual Background 126

2. Analysis 126

3. Internal Auditor's Finding 131

C. Vasquez Architect Firm 132

CHAPTER 17 OTHER SIGNIFICANT INTERESTED PARTY 133

A. Hotel And Restaurant Workers Union Local 11 Of Los Angeles' Opposition To Belmont's Developer Partner: Kajima Urban Development LLC 133

CHapter 18 ANALYSIS OF THE FACTS AND LAW ON BELMONT ENVIRONMENTAL ISSUES 134

A. Education Code §17213 134

B. Is The Belmont Situation "Hazardous Waste"? 136

C. What Is "Hazardous Waste" Under California Law? 136

D. "Hazardous Substances" Versus Hazardous Waste" 138

E. What Are The Duties Imposed On Those Who Have To Deal With Hazardous Substances And/Or Hazardous Wastes In The Development Context? 140

F. What Is A "Hazardous Waste Disposal Site" Under California Law? 141

G. Was The Contamination Identified To LAUSD At Belmont "Hazardous Waste," Making The "Belmont Learning Center " A "Hazardous Waste Disposal Facility"?. 141

H. The Environmental Investigations In 1989, 1990 And 1994 141

  1. November 2, 1988: Property Transaction Environmental Assessment And Soil Sampling Plan For Pacific Rim Plaza, Los Angeles, California; McLaren Environmental Engineering 142

  2. March 9, 1989: Subsurface Investigation For The Pacific Rim Plaza Property In Los Angeles, California; McLaren Environmental Engineering. 142

  3. May 22, 1990: Report Of Phase I Site Assessment, Including Phase II Workplan For Belmont Junior High No. 1.; ABB Environmental Services, Inc. 143

  4. October 1990: Geochemical Investigation of Near Surface Hydrocarbon Gas Accumulations in Soil, Belmont Jr. High School; GeoScience Analytical *(Volume II, Appendix A of the ABB Phase II Report dated November 1990).* 143

  5. November 1990: Phase II Site Investigation Report, Belmont Junior High School No. 1, Los Angeles, California (Volumes I-III); ABB Environmental Services, Inc. 144

  6. March 1994: Report Of Subsurface Investigation, Pacific Rim Plaza, Los Angeles, California; ENV America. 145

  7. Discoveries Of Hazardous Waste At Belmont During Grading By The Developer 145

    a. Abandoned Underground Storage Tanks, Clarifier, Hydraulic Lifts And Impacted Soils At 1101 West First Street 146

    b. Abandoned Underground Storage Tanks And Impacted Soils On Parcel 47, Corner Of Boylston And Mignonette Streets 147

    c. Discovery Of Drilling Mud Pit At The "Future Bleacher Area" 148

    d. Discovery Of Waste Oil Disposal Pit, Court Street And Beaudry Avenue 149

I. Findings Regarding "Hazardous Waste" At Belmont 149

  1. Hazardous Waste Was Disposed At Belmont 149

2. LAUSD And Its Agents Failed To Investigate Properly The Question Of Hazardous Wastes Management At Belmont 150

3. Other Health And Safety Code Violations Occurred As Well 151

J. Should the "Hazardous Waste Property" Permit Process Have Been Triggered? 152

K. Conclusion As To Environmental Findings 153

CHAPTER 19 ADDITIONAL ANALYSIS OF ENVIRONMENTAL LIABILITY ALLOCATION 154

A. Acquisition Of Shimizu Property "As Is" Failed To Provide Adequate Economic Protection To The LAUSD For Assumed Environmental Liabilities 154

CHAPTER 20 INTERNAL AUDITOR REQUESTS BELMONT DOCUMENTS 157

CHAPTER 21 INVESTIGATION FINDINGS 164

A. Findings Regarding The Former LAUSD School Boards 164

B. Findings Regarding Present And Former LAUSD Professional Staff 165

C. Findings Regarding Certain State Agencies 168

D. Findings Regarding The LAUSD's Professional Consultants Or Vendors On Belmont 168

E. Findings That LAUSD's Organization And Reporting Arrangements For School Construction Failed To Ensure That Belmont Learning Complex Project Was Adequately Managed 169

F. Findings That LAUSD's Personnel Failed To Ensure That State Laws Were Followed By Conducting Adequate Environmental Investigations And Risk Assessments 170

1. The Inadequate Characterization Of Property To Locate And Identify Hazardous Waste In Violation Of California Education Code Section 17213 And The California Environmental Quality Act 170

a. Belmont Middle School Site 170

b. Belmont Learning Complex Site 171

2. Inadequate Characterization Of Site Prior To Initiating Development And Construction Of The Belmont Learning Complex 171

G. Findings That LAUSD's Personnel Failed To Ensure That Effective Management And Oversight Were Provided To Outside Consultants 171

CHAPTER 22 RECOMMENDATIONS 173

A. School Facilities' Function 174

B. Environmental Compliance Function 174

C. General Counsel Functions 174

D. Recommended For Discipline 175

CHAPTER 23 REFERRALS TO LAW ENFORCEMENT AGENCIES 187

EXECUTIVE SUMMARY
OF THE
INTERNAL AUDITOR'S
FINDINGS ON THE BELMONT LEARNING COMPLEX

Background On The Development Of These Findings

The Los Angeles Unified School District's ("LAUSD") Office of Internal Audit and Special Investigations Unit ("Internal Auditor") was directed by the former LAUSD School Board on February 23, 1999, to investigate the following six issues relating to the Belmont Learning Complex ("Belmont"):

1. The acquisition, environmental assessment, and remediation of all land associated with Belmont;
2. All contracts and payments to outside consultants and attorneys involved with Belmont;
3. Alleged existences of conflicts of interest relating to Belmont;
4. Any account(s) controlled by the former Bond and Asset Management/Planning and Development offices;
5. The selection, negotiation, and contracting process for the development and construction of Belmont; and
6. Pursue all legal rights and remedies including restitution in the event of the discovery of any wrongdoing regarding Belmont.

Pursuant to this six-point charge, the following Findings on the Belmont Learning Complex addresses points 1, 3, 5 and 6 set forth above. A second set of findings, to be issued in the fall of 1999, will address points 2 and 4, as well as any further matters relating to any of these points that are produced by this investigation of Belmont.

Level Of Effort Expended To Produce These Findings

The Internal Auditor began his investigation in March of 1999, assisted by a team consisting of the law firm of Preston Gates & Ellis LLP and professional investigators working for Owens & Associates, Orswell/Walt & Associates, Wisdom, Wight & Associates, Orswell & Kasman, Inc., and the Leu Group. This team collectively spent over 7,000 hours reviewing more than 15,000 documents, including more than 250,000 pages, and interviewing more than 65 witnesses (many more than once in an attempt to resolve discrepancies) at a total approximate cost of $1.2 million. The Internal Auditor provided each party directly subject to these Findings a specific opportunity to respond to the Internal Auditor's specific questions, orally and/or in writing. The

Internal Auditor reviewed the facts produced in this investigation with his professional team, and made this *Report of Findings.*

Summary Of The Internal Auditor's Findings

Based upon the facts available to the Internal Auditor, his attorneys and investigative team, either through documents or personal interviews, the Internal Auditor has probable cause to believe the following:

Findings Regarding The Former LAUSD School Boards

- The former LAUSD School Boards faced, in a time of limited financial resources in the late 1980s and early 1990s, a formidable challenge -- to address the dramatically increased needs of the LAUSD to serve a growing student population, including approximately 8,000 in the Belmont attendance district, of which nearly half were being bused on a daily basis from their homes. The former LAUSD School Boards began and pursued what is now called the Belmont Learning Complex with the laudable and important policy goal of providing the first new high school built by the LAUSD in 25 years to the attendance district most in need of a modern, high-quality educational facility. The former LAUSD School Boards diligently pursued this goal of providing for a new educational facility to serve the under-served children and their parents of the Belmont attendance area in an atmosphere of financial difficulty, limited real estate options and political controversy. The Internal Auditor believes that, notwithstanding the following findings, this policy goal was and is correct, important, and worthy of completion. The Internal Auditor believes that if the Belmont Learning Complex can be finished in a manner that achieves the twin goals of public safety and educational excellence, it should go forward. There is no viable policy that requires a trade-off between safety and educational excellence.

- The former and current LAUSD School Boards had and have no formal mechanism to orient or train new board members as to their responsibilities under applicable law and School Board policy, nor is there a consistent mechanism to analyze and review the bases for professional staff qualifications, professional staff mission and professional staff deployment.

- The former LAUSD School Boards had no appropriate legal, scientific or medical standards by which to protect public health and safety in the evaluation of environmental hazards associated with prospective school site acquisitions.

- The former LAUSD School Boards had no policy of appropriate legal, scientific or medical standards by which to protect public health and safety in the management of existing school properties for environmental hazards.

- The former LAUSD School Boards had no significant prior experience in the management or development of major public/private joint ventures to develop and build new school facilities.

- The former LAUSD School Boards' exercise of their respective oversight function with regard to Belmont was ad hoc, uninformed by reference to any policy, and generally rudderless with regard to evaluating the proposed acquisition and development at Belmont, or with regard to the evaluation of environmental hazards associated with Belmont. The former LAUSD School Boards failed to cultivate a culture of professional excellence in the performance of the task of major new facility development. The former LAUSD School Boards tolerated a culture remarkably indifferent to compliance with environmental or public health and safety standards, as well as a culture where accountability for these standards was lax. This culture developed a practice of denying responsibility, deflecting (rather than responding to) criticism, and defending poorly planned and executed LAUSD actions with regard to Belmont.

- The LAUSD professional management and staff responsible for Belmont, both past and present, as well as a number of the LAUSD outside consultants on Belmont, misled the former LAUSD School Boards with regard to significant matters of fact, policy and law regarding the Belmont project.

- As a result, the former LAUSD School Boards violated California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4), in the acquisition and development of both the 11 acre and 24 acre parcels that now make up Belmont.

Findings Regarding Present And Former LAUSD Professional Staff

- The LAUSD professional management and staff responsible for Belmont, both past and present, had no significant prior experience in the management and development of major public/private joint ventures to develop and build new school facilities, and had not undertaken the construction of a new high school in 25 years.

- The LAUSD professional management and staff responsible for Belmont, both past and present, failed to cultivate a culture of professional excellence in the performance of the task of major new facility development.

- The LAUSD professional management and staff responsible for Belmont, both past and present, failed to develop appropriate leadership, management strategies, cross-unit teamwork, and professionally competent staffing sufficient to face and meet the challenge of a Belmont-scale project.

- The LAUSD professional management and staff responsible for Belmont, both past and present, failed to properly manage the professional outside consultants brought in to assist on Belmont, and failed to overcome turf rivalry and internal bickering that undermined performance and professionalism. While many of these outside professional consultants failed in their respective roles in serving the LAUSD, their failure does not diminish the importance of this internal failure.

- The LAUSD professional management and staff responsible for Belmont, both past and present, developed and tolerated a culture remarkably indifferent to compliance with environmental or public health and safety standards, as well as a culture where accountability for these standards was lax. This culture developed a practice of denying responsibility, deflecting (rather than responding to) criticism, and defending poorly planned and executed LAUSD actions with regard to Belmont.

- The LAUSD professional management and staff responsible for Belmont, both past and present, failed to advise the former or current LAUSD School Boards as to (1) the former LAUSD School Boards' potential to violate, or (2) the former LAUSD School Boards' actual violation of, the California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4), in the acquisition and management of both the 11 acre and 24 acre parcels that now make up Belmont.

- Certain LAUSD professional staff, including former and current employees, responsible for the management and oversight of the Belmont project in whole or part, personally failed to exercise proper management, supervision and/or professional execution of their assigned responsibilities to conduct the Belmont project in a professional, diligent and lawful manner, including:

    - C. Douglas Brown
    - Dianne Doi
    - Rodger Friermuth
    - Lisa Gooden
    - Roseanne Harding
    - David Koch
    - Elizabeth Louargand

- Richard Lui
- Richard Mason
- Robert Niccum
- Raymond Rodriguez
- Dominic Shambra
- Sidney Thompson
- Susie Wong
- Dr. Ruben Zacarias

Findings Regarding Certain State Agencies

- The California Department of Education failed until 1999 to exercise its statutory duty pursuant to the California School Facilities Act (Education Code section 17251) to set and maintain appropriate legal, scientific or medical standards by which to protect public health and safety in the evaluation of environmental hazards associated with prospective school site acquisitions, and more specifically, in 1993 and 1994 by approving state funds for the acquisition of the Belmont school site.

- The Governor's Office of Planning and Research failed in 1994 and 1996 (and may continue on other school projects) to exercise its statutory duty to provide an appropriate clearinghouse function in its administration of the California Environmental Quality Act ("CEQA") by consistently failing to refer CEQA documents concerning Belmont to the California Department of Toxic Substances Control.

Findings Regarding The LAUSD's Professional Consultants Or Vendors On Belmont

- El Capitan, Inc., breached its duty of professional care to the LAUSD with regard to its evaluation of environmental conditions and management of hazardous wastes, hazardous substances and hazardous materials on the Belmont property.

- McLarand, Vasquez & Partners, Inc., and its partner Ernesto Manuel Vasquez, the architect and architectural firm retained to assist first the LAUSD on the architectural design of Belmont, while concurrently competing as the architect for Temple Beaudry Partners LLC, the developer of Belmont, breached its duty of professional care by engaging in a direct conflict of interest, as well as in failing its duty of professional care in the execution of its architectural professional services with regard to the conditions posed by Belmont, including but not limited to the environmental conditions.

- Law-Crandall, Inc., breached its duty of professional care to the LAUSD in its evaluation of the environmental conditions and management of hazardous wastes, hazardous substances and hazardous materials on the Belmont property.

- O'Melveny & Myers LLP, the law firm retained to assist the LAUSD on Belmont, and its partner, David W. Cartwright, breached their duty of professional care in the representation of the LAUSD with regard to (a) the acquisition of the 24 acre parcel of land that makes up part of Belmont, by failing to advise the LAUSD of its legal duties and responsibilities as to both real estate and environmental legal issues; (b) the recommendation to the LAUSD School Board of an exclusive Belmont developer that O'Melveny and Mr. Cartwright concurrently represented, by failing to take the proper steps to recuse its personnel from decision-making roles in the selection of that proposed developer, with whom O'Melveny had a conflict of interest via concurrent representation of a principal partner in that proposed developer partnership, and (c) the negotiation of the Development and Disposition Agreement with the developer of Belmont, by failing to protect LAUSD's interests.

- Remedial Management Corporation breached its duty of professional care to the LAUSD with regard to its evaluation of the environmental conditions and management of hazardous wastes, hazardous substances and hazardous materials on the Belmont property.

- Temple Beaudry Partners LLC, the developer of Belmont, mislead the regulatory authorities, including but not limited to, the California Department of Toxic Substances Control and the Los Angeles City Fire Department, with regard to the environmental conditions and management of hazardous wastes, hazardous substances and hazardous materials on the Belmont property. Temple Beaudry Partners LLC also failed to meet its contractual responsibility with regard to mitigation of the methane present at Belmont.

Summary Of The Internal Auditor's Principal Recommendations

In light of these findings, the Internal Auditor recommends the following steps be implemented by the current LAUSD School Board:

1. **Reform School Board Practices:** Establish and maintain a program of orientation for new board members as to their responsibilities under applicable law and School Board policy. Establish and maintain a systematic approach to asserting claims of confidentiality and attorney/client privilege that comport with applicable law and sound public policy, and enforce those policies in a disciplined and systematic fashion. Establish an LAUSD systemwide ethics and conflict of interests policy that comports with applicable law and sound public policy.

2. **Provide Disciplined Leadership, Promote Excellence And Ensure Integrity:** Exercise its oversight function with regard to school acquisition and construction processes in a

more disciplined and focused manner. Demand excellence in the quality of staffing and in their performance. Require that the LAUSD School Board be advised in writing as to whether school facility acquisition, development or construction recommended by LAUSD staff comply with LAUSD School Board policy and all applicable laws. Adopt a comprehensive conflict of interest policy that requires all LAUSD employees, as well as consultants, developers, attorneys and any other contract employee or entity who works on school acquisition, development or construction matters in any form of supervisory role be subject to the conflict of interest rules of the Fair Political Practices Act (California Government Code section 82000 *et seq.*, especially 82014, 82019, 87100, and the related regulations set forth in Title 2 of the Code of California Regulations, section 18700 *et seq.*). Prohibit the solicitation of campaign contributions by any LAUSD employee or consultant (or any agent on their behalf) from any LAUSD employee or consultant over whom the soliciting LAUSD employee or consultant has supervision or control.

3. Develop New Environmental/Public Health And Safety Policies: Develop and adopt an appropriate policy or policies of legal, scientific or medical standards, by which to protect public health and safety in setting policy for the evaluation of environmental hazards associated with prospective school site acquisitions and for the management of existing school properties for environmental hazards, especially those that pose a threat to student, staff or public health and safety. This policy must take into consideration all legal requirements imposed by local, regional, ,state and federal law, as well as contemporary scientific and professional standards. The LAUSD School Board should coordinate this proposed policy development to comport with the new legislative requirements Senate Bill 162 (Escutia), which was passed by the California Legislature late in this session, if that legislation is signed into law by Governor Gray Davis.

4. Review And Restructure Professional Staff Functions: Undertake a thorough review of the current policies and administrative structure for the acquisition, development and management of LAUSD facilities and all other properties. Based on that review, change the administrative structure and practice of the LAUSD to accomplish, as a minimum, the following:

School Facilities' Function

- Employ and compensate appropriately a senior professional manager and related employees, all of whom have the requisite education, experience and expertise in the acquisition, development and construction of school buildings on real property (avoid the promotion of unqualified individuals who happen to have either tenure and/or seniority of employment within the LAUSD).
- Redesign all of the functions related to school site acquisition, development and construction to work closely together in a professional manner to implement all laws and School Board policy relating to school property acquisition, development and management.

Environmental Compliance Function

- Establish an entity separate and apart from the facilities function, and provide this separate entity with a leader, who by education, experience and expertise, can assemble employees with the requisite professional education, experience and expertise, such that as a unit they can be held responsible for all environmental as well as occupational or public health and safety functions within the LAUSD (including but not limited to compliance with the California Environmental Quality Act), and make this unit separate by function and line of command from any other LAUSD Division, in order to maximize a system of checks and balances necessary to assure implementation of LAUSD policy and applicable law as well as to protect LAUSD from future liability.

General Counsel Functions

- Review and reform the function of the General Counsel in order to accomplish the following goals: (1) provide independent legal advice to the School Board, (2) provide legal advice and oversight to the professional LAUSD staff on all matters of compliance with law and School Board policy, and (3) represent (in concert with other professional staff) the LAUSD before all local and state agencies with regulatory powers or financial authority (i.e., involving loans, grants or other financial commitments to or from the LAUSD).

- Create an Independent Counsel to the School Board, whose function would be to provide legal advice and counsel with regard to compliance with law and School Board policy, separate and apart from advice to the LAUSD professional staff as provided by the General Counsel.

- Restructure the Office of the General Counsel of the LAUSD to provide for a General Counsel and separate Assistant General Counsel positions to be responsible for (a) human resources and worker compensation matters; (b) school finance and real property management; (c) environmental and occupational health and safety matters; (d) litigation; (e) compliance with state and federal laws relating to the LAUSD (*i.e.*, federal education laws, the California Education and Government Codes and their implementing regulations); and (f) internal affairs (this position would assist the Internal Auditor in providing counsel and assistance to internal audits and special investigations).

- Require the Office of the General Counsel to draft for School Board approval the new Conflict of Interest Policy, to maintain all necessary records to implement that policy, and to train all impacted persons on the requirements of that policy, and then to review and report to the School Board on a quarterly basis any additions or deletions from those persons subject to the conflict of interest policy, and any disciplinary actions recommended or taken to enforce that conflict of interest policy.

- Require that the Office of the General Counsel recommend for School Board approval a formal policy with regard to the creation, maintenance, dissemination and protection of any document for which a claim by the

LAUSD to attorney/client or attorney work product privilege should attach. This policy should be designed to balance the competing interests of the public's right to know with the School Board's legitimate, fiduciary duty to protect the LAUSD's legitimate rights to formulate policy with and upon the advice of legal counsel.

5. **Discipline Certain LAUSD Employees:** In compliance with all applicable LAUSD and State Personnel Commission requirements, and any other applicable requirement of law, the following LAUSD personnel should be disciplined as follows:

Recommended For Discipline[1]

Dianne Doi	Be disciplined in an appropriate manner, up to and including termination
Rodger Friermuth	Be disciplined in an appropriate manner, up to and including termination.
David Koch	Be disciplined in an appropriate manner, up to and including termination
Elizabeth Louargand	Be disciplined in an appropriate manner, up to and including termination
Richard Lui	Be disciplined in an appropriate manner, up to and including termination
Richard Mason	Be disciplined in an appropriate manner, up to and including termination
Robert Niccum	Be disciplined in an appropriate manner, up to and including termination
Raymond Rodriguez	Be disciplined in an appropriate manner, up to and including termination
Susie Wong	Be disciplined in an appropriate manner, up to and including termination

Given the findings regarding the failure of LAUSD staff, the Internal Auditor recommends that the School Board consider Superintendent Ruben Zacarias' failure to supervise the Belmont project in a diligent, professional and effective manner as part of his next scheduled performance evaluation.

---

[1] All of those persons named on pages 4 and 5 above who are not now employed by the LAUSD, if they were still employed by LAUSD, would have received the same recommendation for discipline as those listed here.

6. **Pursue Legal Action Against LAUSD's Professional Consultants Or Vendors**: Commence civil legal actions against the following professional consultants or vendors for their breach of professional care or duty with regard to their respective roles at Belmont, and seek damages and/or restitution to the LAUSD:

- El Capitan, Inc.
- McLarand, Vasquez & Partners, Inc.
- Law-Crandall, Inc.
- O'Melveny & Myers LLP
- Remedial Management Corporation

To preclude any real or perceived conflict of interest, the Internal Auditor recommends that these legal actions be initiated by outside counsel not previously involved in any fashion with Belmont, and that legal counsel be retained, following an appropriate competitive bid process, through a written retention agreement that precludes conflicts of interest.

7. **Negotiate With And/Or Pursue Legal Action Against The Belmont Developer:** Negotiate satisfactory resolution with, or failing to obtain a negotiated resolution, commence civil legal action against, Temple Beaudry Partners LLC for that party's failure to inform properly the California Department of Toxic Substances Control and the Los Angeles City Fire Department with regard to the environmental conditions and management of hazardous wastes, hazardous substances and hazardous materials on the Belmont property, and for that party's failure to meet its responsibility with regard to the proper and timely mitigation of the methane present at Belmont.

8. **Reform The Safety Team:** While well-intentioned as an emergency response to the discovery of hazardous material at the site of Jefferson Middle School, the role of the Safety Team in regards to Belmont and at all other school facility sites should be reformed to accomplish one or the other of two functions: (1) provide professional outside advice to the LAUSD professional staff, or (2) provide independent assessments of the performance of the LAUSD professional staff. These two functions cannot be performed at the same time by the same people. If the first assignment is made, their loyalty must be to the LAUSD, offering advice and counsel in the context of overall direction from the School Board and LAUSD professional staff, including maintenance of the attorney/client privilege for all communications between counsel and client. If the second assignment is made, all communications must be public in nature and made without regard to potential conflict with LAUSD professional staff views.

9. Implement All Requirements Imposed By The California Department Of Toxic Substances Control With Regard To The Completion Of Belmont: Complete the process approved by the LAUSD School Board and begun by the Safety Team with the California Department of Toxic Substances Control, and implement all requirements established for Belmont by that state agency, pursuant to the Voluntary Corrective Action Agreement, dated February 22, 1999. Concomitant with completing this process, and in furtherance of the School Board's Resolution dated February 23, 1999, negotiate with the California Department of Toxic Substances Control to obtain a formal and practical means by which LAUSD may work with the California Department of Toxic Substances Control to achieve compliance with the California Environmental Quality Act (Resources Code section 21151.8), as well as California's School Facilities Act (Education Code section 17213), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4), and other related statutes or regulations, in the acquisition, development and management of new and existing school facilities.

10. Cooperate with Any Further Belmont Investigations: Adopt and implement a policy of full cooperation with any further investigations of Belmont, with appropriate guidance (and sanction if required) to the LAUSD professional staff to implement this policy fully. This policy should apply with regard to any further efforts required by the Internal Auditor to complete this investigation of Belmont, as well as to the newly formed Belmont Commission, and to any outside law enforcement agency investigating Belmont.

Referrals To Prosecutorial Agencies

Based upon the facts available to the Internal Auditor, his attorneys and investigative team, either through documents or personal interviews, the Internal Auditor has probable cause to believe that certain acts or omissions by certain persons or entities may constitute violations of criminal law, and as a result, the Internal Auditor has referred these matters to the appropriate law enforcement agency for further investigation and determination as to whether a criminal violation(s) has occurred. In light of the constitutional and statutory implications and protections required in criminal investigations, the Internal Auditor nor anyone on his legal and investigative teams will comment on any referral to a prosecutorial agency.

CHAPTER 1

THE ROLE OF THE INTERNAL AUDITOR AND THE NATURE OF THE BELMONT INVESTIGATION

A. School Board's Authorizing Resolution

Following widespread public concerns regarding the manner in which the Los Angeles Unified School District ("LAUSD") selected, acquired and developed property for the Belmont Learning Complex ("Belmont"),[2] the LAUSD's Office of Internal Audit and Special Investigations Unit ("Internal Auditor") was directed by the LAUSD School Board ("School Board") on February 23, 1999,[3] to investigate the following six issues relating to Belmont:

1. The acquisition, environmental assessment, and remediation of all land associated with Belmont;
2. All contracts and payments to outside consultants and attorneys involved with Belmont;
3. Alleged existences of conflicts of interest relating to Belmont;
4. Any account(s) controlled by the former Bond and Asset Management/Planning and Development offices;
5. The selection, negotiation, and contracting process for the development and construction of Belmont; and
6. Pursue all legal rights and remedies including restitution in the event of the discovery of any wrongdoing regarding Belmont.

To assist the Internal Auditor in this investigation, the School Board also authorized funds by which the Internal Auditor retained investigators and outside counsel to assist in the Belmont investigation.[4]

B. Purpose Of This Report of Findings

Pursuant to the School Board's six-point charge regarding Belmont, this Report addresses points 1, 3, 5 and 6 set forth above. Proceeding according to recently enacted California

---

[2] The Internet websites for the *Daily News* and the *Los Angeles Times* can be accessed at **www.dailynews.com** and **www.latimes.com**, respectively, to obtain news articles relating to Belmont. "Belmont" will be used generally in this *Report of Findings* to describe the 35 acre site that now makes up the Belmont Learning Complex.

[3] Resolution of the Los Angeles Unified School District's Board of Education, dated February 23, 1999. *See* Attachment 2.

[4] Resumes of the Internal Auditor and his team are attached. *See* Attachment 1.

Education Code §35401(c),[5] the Internal Auditor specifically deems this investigation and resulting *Report of Findings* necessary to serve the interests of the LAUSD. As a result, the Internal Auditor in this *Report of Findings* makes specific findings of fact regarding the development of the Belmont site and makes recommendations to remedy identified deficiencies in the LAUSD's current policies and procedures for siting and developing school buildings as reflected in this review of Belmont.

The Internal Auditor is currently engaged in an on-going review of all contracts and payments to contractors, outside consultants and attorneys, as well as a review of the accounts controlled by the former Bond and Asset Management/Planning and Development Offices. The results of these reviews will be detailed in a separate, and forthcoming report which will be issued after completion of the review of the relevant accounts and records. This second report, to be issued in the fall of 1999, will address points 2 and 4 of the School Board's authorizing resolution, as well as any further matters relating to any of the points raised by the School Board that are produced by this on-going investigation of Belmont.

C. Scope And Methodology Of This *Report of Findings*

The scope of the Internal Auditor's inquiry has been retrospective in focus to determine how the Belmont site was acquired and the type of environmental assessment that was undertaken at the site. The Internal Auditor was not authorized or directed to provide technical and scientific analysis regarding the current environmental conditions at the Belmont site. The LAUSD has assembled an environmental safety team to oversee a remedial investigation and analysis of the Belmont site for purposes of determining whether to proceed with the development of the Belmont site in light of identified public health and safety concerns. Therefore, in this report the Internal Auditor has not undertaken to duplicate the scientific inquiry of the District's environmental safety team which is currently supervised pursuant to a Voluntary Corrective Action Agreement with the California Department of Toxic Substances Control ("DTSC"), dated February 22, 1999.

During the review, the Internal Auditor and his staff were assisted by independent professionals, including the law firm of Preston Gates & Ellis LLP and a number of professional investigation firms, including Fred V. Ahles & Associates, Inc., Information & Investigative Services, Orswell & Kasman, Inc./ Orswell/Walt and Associates, Owens & Associates Investigations, Wisdom, Wight and Associates. The Internal Auditor also retained David Leu, Ph.D., to assist his team on environmental science and policy issues.[6] This assembled team conducted the following tasks in carrying out the review of Belmont.

- Interviewed current and former personnel of the District's staff who were responsible for all aspects of the Belmont selection, acquisition and development;
- Interviewed personnel of the outside consultants (legal, environmental, architectural, financial) who worked on Belmont;

---

[5] SB 1260 (Hayden), Stats. 1999, c. 295 (signed by Governor Davis on August 31, 1999.

[6] The identification and qualifications of this outside team are provided in Attachment 1.

- Interviewed personnel who work for the Belmont developer, Temple-Beaudry Partners LLC;
- Interviewed state and local regulatory agency personnel;
- Requested and examined supporting documents, including original LAUSD correspondence and reports, documents obtained from regulatory agencies, and documents obtained from outside vendors and consultants who worked on Belmont;
- Performed a detailed review and created a computerized index to more than 15,000 individual documents, including more than 250,000 pages; and
- Performed reviews of other source or secondary materials as deemed necessary.

This review was conducted from March to September 1999.

CHAPTER 2

WHY DOES BELMONT FEEL LIKE HISTORY REPEATING ITSELF?

A. Park Avenue School "Seepage" In 1989

In the summer of 1989, an oily substance was found seeping up through the asphalt playground of the Park Avenue Elementary School in Cudahy. This LAUSD school was closed immediately to investigate the source of the seepage,[7] especially when both staff and students reported various ailments.[8] The seepage was subsequently identified as a leachate resulting from refuse and petroleum products dumped years before in an old landfill where Park Avenue School is now located.[9]

As a result of this "seepage" discovery and the resulting public outcry,[10] California State Senator Art Torres, sitting as chair of the California State Senate's Committee on Toxics and Public Safety Management, convened a public hearing in Cudahy on August 11, 1989, to take testimony from LAUSD as well as county, state and federal officials, environmental consultants and the general public on the seepage and resulting response to the events that transpired at Park Avenue School.[11]

B. Park Avenue Children And Parents Complain

Children and parents testified to various health problems, including headaches, fevers and stomach aches.[12] A parent, Mr. Ernie Castillo, testified that LAUSD had known for 20 years that there were toxic materials under Park Avenue School, and that LAUSD had specifically been given a report, which he identified as the December 1988 Thorn Report, that identified five specific carcinogenic materials present under Park Avenue School. He further testified that Ms. Susie Wong, who he identified as the Chief Safety Officer of the LAUSD, "denied that it was serious enough to do something about it" on June 20, 1989.[13] Senator Torres commented that such information should have been reported pursuant to Proposition 65.[14] Senator Larry

---

[7] *Los Angeles Times*, Part 2, at 1, col. 5, July 20, 1989

[8] *Id.*, Part 2, at 2, col. 1, August 12, 1989.

[9] *Id.*, Part 2, at 3, col. 5, August 3, 1989.

[10] *Id.*, Part 2, at 2, col. 1, August 12, 1989.

[11] Transcript of "Hearing: Senate Toxics and Public Safety Management Committee, State of California, Cudahy Council Chambers, Bedwell Hall, Cudahy, California, August 11, 1989 (hereinafter "Park Avenue Transcript." *See* Exhibit 333.

[12] Park Avenue Transcript, pp. 10-22, and 37-49. *See* Exhibit 333.

[13] *Id.*, at 24.

[14] *Id.*, at 25. In addition to the Safe Drinking Water and Toxic Enforcement Act (California Health & Safety Code sections 25249.5-25249.13), the complete initiative ballot language of Proposition 65 also included an amendment to the California Hazardous Waste Control Law. At the instigation of then-Assembly member Tom Hayden, the initiative language amended the

Stirling, the Vice-Chair of the Committee, commented that "I just walked over to the school. You can smell the methane gas emitting from the ground there."[15] Manuel Dortha, the chair of the Parent Teachers Association at Park Avenue Elementary School, testified about the parents' concerns about airborne carcinogenic materials from the seepage.[16]

C. Cudahy Elected Officials Complain

Tom Thurman, the Mayor of the City of Cudahy, and Dr. John Roberts, a member of the Cudahy City Council, each testified as to their concerns about the failure of LAUSD officials as well as state and federal environmental officials to respond to the situation at Park Avenue Elementary School.[17] Dr. Roberts specifically faulted the LAUSD Superintendent of Schools, commenting that

> One thing really concerns me, and that was on a T.V. broadcast last night, the Superintendent of Schools. And he was asked why are you putting up schools -- because I had reference to eight schools on toxic dumps. He says no, there's about fourteen. Well, why are they doing that. They're constructing a school right now, a high school, on a toxic dump. He says, well, the land is cheap.
>
> Listen, our kids -- we're talking about a 15-year investment there, and there seems to be a mentality, a mind set, to find a vacant piece of land that may be toxic, so what? We'll cover it, and we'll put a school there.
>
> I mean, this is what I'm hearing on T.V. I'm not putting words in the man's mouth.
>
> I do think, and this is one of the things I want to come back to, that you, in terms of a Legislator, should be saying, 'Hey, folks, if we're going to err, we're going to err on the side of safety.' After all, wasn't this was the Field bill was all about?

California Hazardous Waste Control Law by establishing new civil and criminal penalties for policy-making public officials who fail to report "illegal discharge or threatened illegal discharge of hazardous waste discharges which is likely to cause substantial public health and safety" within their geographical jurisdiction to their respective county Board of Supervisors, the local public health officer and the press. *See* Health & Safety Code §25180.7. For an in-depth discussion of these new requirements on California employees subject to disclosure requirements, see 70 Cal.Atty.Gen.Ops. 130 (June 2, 1987), and 70 Cal.Atty.Gen.Ops. 183 (July 30, 1987).

[15] Park Avenue Transcript, p. 25. *See* Exhibit 333.

[16] *Id.*, pp. 28-33.

[17] *Id.*, pp. 50-69.

> And yet, here is a different mentality, a different mind set, chugging off along with a lot of the other problems there. It scares me."[18]

D. David Koch of LAUSD Testifies

Mr. David Koch, identifying himself as the LAUSD's Division Administrator of the Business and Services Division,[19] testified before the Committee on behalf of the LAUSD. Mr. Koch confirmed that LAUSD had known of the contamination below Park Avenue Elementary School as early as 1968, based upon a letter from the construction company building the school that year.[20] Mr. Koch also acknowledged that Mr. William Piazza, an LAUSD Safety Officer who reported to Mr. Koch, had received correspondence from the California Department of Health Services in 1986 concerning environmental problems (specifically issues regarding methane mitigation measures) at Park Avenue Elementary School.[21] Mr. Koch acknowledged that while his office had received the report of an outside consultant (the Thorne report) on December 9, 1988, that information had not been conveyed to responsible officials in Cudahy until May or June of 1989.[22] Chairman Torres then conducted the following exchange with Mr. Koch:

> Chairman Torres: Has the School District changed its school siting procedure to avoid buying and building on contaminated property?
>
> Mr. Koch: The -- as Assemblyperson Hughes is aware, the District is trying to construct a number of schools because of our overcrowding.
>
> Chairman Torres: That's not what I asked. I asked, does the school district plan to revise its procedures in siting and building on contaminated property?
>
> Mr. Koch: The Board is trying to weigh the --
>
> Chairman Torres: I'm asking whether it will be your recommendation whether the School District should revise its siting procedures to avoid buying and building on contaminated property?
>
> Mr. Koch: If the contaminated property can be adequately mitigated, I think it's okay.

Senator Torres then directed the questioning to the broader question of whether other schools were adversely affected by environmental conditions:

---

[18] *Id.*, pp. 65-66. In response to a question from Chairman Torres about enforcement of environmental laws by prosecutors, Dr. Roberts noted: "And you say you should contact the D.A., well the D.A. has been contacted, and he hasn't done anything." *Id.*, p. 68.

[19] Mr. Koch's name was consistently misspelled in the Park Avenue Transcript as "Cook."

[20] *Id.*, pp. 71-72.

[21] *Id.*, pp. 73.

[22] *Id.*, p. 81.

> Chairman Torres: How many present school sites in Los Angeles Unified School District are within a quarter mile of a dump site?
>
> Mr. Koch: About 39.
>
> Chairman Torres: Is it your intent or your recommendation that there be significant testing done by an independent agency to determine the nature of those sites that are within a quarter mile of a school?
>
> Mr. Koch: We have to date conducted tests at all these sites.
>
> Chairman Torres: At all 39 sites.
>
> Mr. Koch: Over 200 sites, actually; 230 some odd sites for methane, because the problem of methane is not limited to landfills. It also occurs in oil fields; it occurs in natural oil foundations and tar pit sort of situations.[23]

E. Environmental Consultant Angelo Bellomo Testifies

Mr. Angelo Bellomo of McLaren Environmental Engineers testified as to the work his company was doing on behalf of the LAUSD at the Park Avenue Elementary School.[24] While presenting the work completed to date, Mr. Bellomo indicated that further testing would be required to fully characterize and resolve the problems.[25] Chairman Torres also questioned Mr. Bellomo, as he had also questioned Mr. Koch, about the presence and potential danger of gas pipelines found under the property at Park Avenue Elementary School.[26]

F. Government Environmental and Health Officials Testify

Mr. Dennis Dickerson, Regional Administrator for Region 3, Toxic Substances Control Division of the California Department of Health Services, and three of his staff; as well as Donald C. White of the Field Operations Branch of the U.S. Environmental Protection Agency; and Ms. Carol Ward of the Los Angeles County Health Department also testified. Mr. Dickerson, Mr. White and Ms. Ward were quizzed closely by Chairman Torres concerning the types of testing that needed to be done to evaluate the Park Avenue Elementary School situation.[27] None of these officials would give a final view as to what would need to be done about the environmental conditions at Park Avenue Elementary School, though Mr. White indicated that his agency was going to list the Park Avenue Elementary School on the national Superfund list.[28]

---

[23] *Id.*, pp. 86-87.
[24] *Id.*, pp. 92-111.
[25] *Ibid.*
[26] *Id.*, p. 105 for Bellomo, pp. 90-91 for Koch.
[27] *Id.*, 111-121
[28] *Ibid.*

G. Senator Torres Authors SB 2262 In 1990

In light of his Committee hearing in Cudahy in 1989, on February 27, 1990, Senator Torres introduced SB 2262 to amend Resources Code §21151.3, which is a part of the California Environmental Quality Act ("Act"). According to the Legislative Counsel's Digest:

> . . . Existing law prohibits the approval of an environmental impact report unless facilities within a specified distance of the proposed schoolsite are identified which might reasonably be anticipated to emit hazardous or acutely hazardous air emissions and the governing board of the school district makes specified written findings.
>
> This bill would, in addition, require that the property to be purchased, or to be constructed upon, is found not to be the site of a toxic dump or solid waste disposal site, a hazardous substance release site, or a site which contains pipelines which carry hazardous materials or toxic wastes. . . [29]

The initial legislative committee analysis (Senate Toxics and Public Safety Management Committee) prepared for the first policy committee hearing on April 23, 1990, gives the following rationale for the proposed legislation:

> 1) This bill is sponsored by the author. This measure grew out of the findings from a 1989 interim hearing held by the Senate Toxics and Public Safety Management Committee on the hazardous materials at the Park Avenue Elementary School in the City of Cudahy. The Park Avenue Elementary School was constructed on top of the "Cudahy Dump."
>
> 2) The 1989 interim hearing disclosed that numerous children attending that elementary school suffered headache and stomachaches over extended periods of time during 1989. Also, children became sleepy, lethargic, and/or confused after a "tarry" material was found to be seeping at the schoolyard. The cost of housing Park Avenue children in the nearby schools for the first half of 1989 was $840,000. Testimony was received that a 30-inch gas line runs in front of the school and an 8-inch high-pressure gasoline line runs through the playground. Testimony identified that 14 schools are being constructed over former toxic dump sites, rather than other sites, because the land is cheap.
>
> 3) The bill prohibits schools from being constructed on any current or former toxic or solid waste site, or upon sites which have pipelines, situated underground or aboveground, carrying hazardous materials or hazardous wastes.
>
> 4) This bill is similar to prior Session Legislation authored by Assemblywoman Maxine Waters (AB 3205), enacted as Chapter 1589, Statutes of 1988, which prohibits the building of schools near facilities emitting hazardous air emissions. [30]

---

[29] SB 2262, February 27, 1990 version, p.1. *See* Exhibit 331.

[30] In fact, the bill in its original form actually precluded the approval of an environmental impact report or negative declaration under CEQA. *See* Exhibit 335. *See also* note __ *infra*.

The only LAUSD official to comment on the original SB 2262 version was Dr. Bonnie James, the Deputy Administrator in the Business Services Division, who requested that the LAUSD's lobbyists oppose the bill unless it was amended.[31]

Prior to the April 23 hearing, the California Department of Health Services ("DHS") analyzed the SB 2262, and proposed certain amendments, explaining why they were necessary as follows:

> SB 2262 contains ambiguous terms which need clarification. The meaning of the words "hazardous materials," "extremely hazardous material," "hazardous waste," and "toxic" may vary among state agencies and between the state and federal government. The use of the term "toxic" in SB 2262 is of particular concern as it excludes substances which are ignitable, corrosive, reactive and infectious. There is also concern that the list SB 2262 would use to identify hazardous substance release site would be underinclusive. The Hazardous Waste and Substances Site List includes sites listed by the DHS, the Water Quality Control Board, and the California Integrated Waste Management Board.

Specifically, the DHS sought the following amendments to section (a):

(1) change the words "toxic dump" to hazardous waste disposal site

(2) change the list name to Hazardous Waste and Substances Site List

(3) change the definitions of what a pipeline carries to "hazardous substances" and "hazardous wastes."

DHS then asked that the terms "hazardous substance," "hazardous waste," and "hazardous waste disposal site" have the same meaning as they were given in the Health & Safety Code. Senator Torres accepted all of DHS' proposed amendments and the bill was amended on May 1, 1990, receiving a unanimous "Aye" vote from the Committee.[32] The bill was subsequently approved in the Senate by all appropriate committees and then on the floor of the Senate.

However, in the Assembly Committee on Natural Resources, SB 2262 was criticized by that Committee's chair, Mr. Byron D. Sher, as confusing how CEQA works, and he recommended the transfer of the bill's prohibitions from the Resources Code to the Education Code as straightforward education policy, while requiring a school board as the CEQA lead agency to make sure their CEQA process met the policy requirements to be imposed in the Education Code. Senator Torres accepted Assemblymember Sher's recommendations and changed his bill accordingly to amend both Resources Code §21151.8 and Education Code §39003.[33] DHS also weighed in again at this Committee stage, asking that the term "Hazardous Waste and Substances Site List" in the bill be given the same meaning that it was given by the DHS in the Health and Safety Code, an amendment Senator Torres also accepted. The Committee then unanimously adopted the bill as amended.

---

[31] *See* Exhibit 346.

[32] Senate Final History, Volume 2, 1989-90 Regular Session, p. 1487. *See* Exhibit 334. Subsequent to this amendment, LAUSD's Dr. Bonnie James changed his position to support the bill as amended. *See* Exhibit 346.

While recommending an "Aye" vote, the Assembly Natural Resources Committee's Republican minority analysis noted the CEQA problem that Mr. Sher wanted fixed, and then went on to observe: ". . . the only question then would be whether the bill might be too rigid in prohibiting all such school projects. Given the state's enormous school construction backlog, perhaps the bill should have some "wiggle room" if local or state health officials make a determination that the site in question does not pose a health threat."[34]

SB 2262 then sailed through all of its other committees and weathered further votes on the floor of the Assembly and Senate, with only a single "no" vote cast along the way. Governor George Deukmejian signed SB 2262 into law on September 30, 1990, with the new law to take effect on January 1, 1991.[35]

H. AB 928 -- LAUSD Attempts To "Clarify" SB 2262

Nonetheless, in legislation proposed in the 1991 session -- AB 928 by Assemblywoman Marguerite Archie-Hudson, LAUSD's Robert Niccum asked Mr. Santiago Jackson, Assistant LAUSD Superintendent, Legislation, on April 1, 1991, to seek Ms. Archie-Hudson's agreement to amend her bill to clarify SB 2262's impact as follows:

> This measure also clarifies that the provisions of SB 2262 (Chapter 1602/1990) do not apply to the placement of portable classrooms to relieve overcrowding. SB 2262 prohibits the construction of new buildings on specified or potentially hazardous sites, including sites where underground pipelines carry hazardous materials. Since the placement of portable classrooms does not necessitate the disturbance of the soil, as occurs with new construction, the likelihood of uncovering hazardous substances during their installation is minimal. . . .
>
> Finally, this proposal would exempt the placement of portable classrooms used to relieve overcrowding from the siting prohibitions of SB 2262.[36]

Ms. Archie-Hudson accepted this proposed amendment by adding language to her April 18, 1991 version of AB 928 bill to amend not Education Code §39003 (added by SB 2262), but rather to amend Education Code §39120 to qualify the language of Education Code §39003 by exempting "the placement of portable classrooms on an existing schoolsite," and by redefining the "approval" of a project for funding purposes as "includes, but is not limited to, the acceptance of construction bids." LAUSD thereafter drafted Ms. Archie-Hudson's speeches in support of this legislation.[37]

---

[33] Education Code §39003 was recodified as Education Code §17213 in a massive recodification of the Education Code made by Stats. 1996, chapter 1562. *See* Exhibit 336.

[34] Assembly Natural Resources Committee, Republican Analysis of S.B. 2262. *See* Exhibit 335.

[35] The *Pacific Law Journal*'s annual review of "Selected 1990 Legislation" summarized this new law. *See* 22 *Pacific Law Journal* 553, 554 (1990). *See* Exhibit 337.

[36] Senate Bill No. 2262. *See* Exhibit 331.

However, when AB 928 was reviewed by the Senate Toxics and Public Safety Management Committee staff for the July 15, 1991, hearing before that Committee, several questions were raised, including why are portable buildings to be exempted? More pointedly, this staff analysis asked the following question:

> 2) The bill defines approval of the project as acceptance of construction bids for purposes of constructing a new school.
>
> Would this allow schools to commit significant amounts of moneys on preliminary plans and working drawings before learning that a site is contaminated?

In reaction, on July 12, according to notes taken by Ms. Archie-Hudson's staff, LAUSD's Santiago Jackson pushed to retain the portable classroom exemption in the face of the Senate Toxics and Public Safety Management Committee staff's objections, arguing LAUSD otherwise "can't expand existing schools." These notes indicate as well that Ms. Archie-Hudson's staff was concerned about the other amendment to Education Code §39120, noting that

> I told him [Mr. Santiago Jackson] we don't want the exact language of the bill because it would allow preliminary plans & working drawings to be undertaken on a site that has not been tested to determine if [sic] has toxics on its site.[38]

As a result, the proposed portable buildings exemption was deleted in the August 19, 1991 amendments to AB 928, and the language of proposed Education Code §39120 was tightened to read as follows:

> (a) The governing board of a school district shall not approve a project for the construction of a new school building, as defined in Section 39141, unless the project and its lead agency comply with the same requirements specified in subdivision (a) of Section 39003 for schoolsite acquisition.
>
> (b) For purposes of this section, the acceptance of construction bids shall constitute approval of the project.

These amendments also broadened, rather than narrowed, the definitions of "hazardous waste" and "hazardous waste disposal site" as created by SB 2262 the year before, creating the language of Education Code §17213 as it reads today.[39] The change conditioning approval of a project on the acceptance of construction bids required in effect that a proposed site be fully evaluated and priced pursuant to law (including the costs of environmental remediation).

---

[37] *See* Exhibit 348.

[38] *See* Exhibit 347.

I. AB 1024 -- LAUSD Modifies Eminent Domain Law to Account for Hazardous Materials

The last major change sought in this general timeframe also appears to have been a result of the advocacy of Mr. Robert Niccum of the LAUSD. In handling the acquisition of real property by eminent domain, the LAUSD confronted taking property that was contamined, but for which they were forced to pay fair market value as if the land did not have any contamination on or under it. To remedy this situation, Mr. Niccum (assisted by Mr. James Colbert, a partner in the law firm of O'Melveny & Myers LLP),[40] drafted AB 1024, which was also adopted in 1991. This bill addressed the LAUSD's concerns by requiring, only in the context of an eminent domain proceeding by which a school district is seeking to condemn and thereby acquire real property, that a court make the following findings:

- hazardous substance(s) were present on the property
- identify the measures necessary to remove or remediate the hazardous substance(s)
- designate a trustee (usually the school district) to monitor the remediation, to hold the funds necessary to pay for the remediation, and finally to pay for the remediation from the escrowed funds.

The fair market value appraisal price of the real property did not take into account this cost of remediation, but rather the cost of remediation was set aside from that appraisal amount to pay for the remediation. *See* California Code of Civil Procedure §1263.710 *et seq.* (especially §1263.720).[41]

Between the actions taken by Senator Art Torres in response to the Park Avenue School situation and the various legislative initiatives taken by the LAUSD, by the end 1991 the statutory rules regarding what limits and rules were imposed on school boards with regard to the acquisition of real property containing environmental hazards were clearly established, and would remain essentially unchanged in their basic form for the rest of the decade.

J. Belmont -- The Ghost Of Park Avenue School

The Internal Auditor observes that the juxtaposition in real time of Park Avenue School and the beginning of Belmont are nothing short of remarkable.

On August 11, 1989, Senator Art Torres set in motion a state legislative development process that culminated in SB 2262, which established by January 1, 1991, a brightline test for local school boards to follow: no building on hazardous waste disposal sites, or state-listed hazardous substance release sites, or where a pipeline containing hazardous materials is located.

---

[39] Assembly Bill No. 928. *See* Exhibit 332.

[40] Interview with James Colbert on September 8, 1999.

[41] Stats. 1991, c. 814 (AB 1024). In 1995, the term "hazardous substance" was broadened to "hazardous materials." Stats. 1995, c. 47 (SB 231).

On August 21, 1989, a mere ten days after the Park Avenue hearing before Senator Torres' committee, the LAUSD School Board approved the land acquisition program for Belmont New Junior High School No.1 and authorized the Real Estate Branch to begin the environmental review process.[42] On July 15, 1991, Richard Walton of the Office of Local Assistance approved the Environmental Impact Report for the Temple and Beaudry site.[43] The "Belmont" that is the subject of this *Report of Findings* had begun.

---

[42] School Board action dated August 21, 1989. [IA-01133] *See* Exhibit 6.

[43] Letter from Richard Watson to Dr. Bonnie James dated July 15, 1991. [IA-14616] *See* Exhibit 28.

CHAPTER 3

LAUSD ORGANIZATION AND RESPONSIBILITIES

The Internal Auditor's review of the selection, acquisition, environmental assessment and development of Belmont has primarily focused on the activities of the personnel of, and contractors or consultants to, the LAUSD. In order to properly assess responsibility for the actions of key LAUSD personnel during the course of the Belmont project, it is important to understand the organization of LAUSD for the period of 1990 to the present. The organizational charts for the LAUSD, for the Business Services Division and Facilities Services Division[44] for the period of 1990 to 1999 are attached to this report as Attachment 3. The following LAUSD offices and personnel were involved in the acquisition and development of Belmont.

A. School Board

The LAUSD School Board is authorized by the California Education Code to act as the governing body in establishing overall policy and direction for the LAUSD.[45] In addition, the Education Code imposes specific obligations on the LAUSD Board in approving school site selection, certifications under the California Environmental Quality Act ("CEQA") and in committing public funds to school construction purposes. Beginning in 1990, the LAUSD School Board took a number of official actions to approve the acquisition, environmental assessment and development of Belmont. The specific Belmont-related resolutions that the LAUSD School Board passed have been detailed in the Timeline Document, which is attached to this report as Attachment 6.

B. Office Of The Superintendent

The chief executive officer of the LAUSD is the Superintendent, who establishes general management and oversight of all LAUSD personnel, operations, programs, buildings and funds. The Belmont site acquisition began in 1990 under Superintendent William Anton. Mr. Anton left the LAUSD in late 1992. At that time Mr. Sidney Thompson became Superintendent of the LAUSD. Mr. Thompson's superintendency extended during the majority of the time in which Belmont's land was acquired and planned for development. In describing his management style, Mr. Thompson has stated that he depended on a superintendent's cabinet consisting of the heads of the various divisions within LAUSD. At least ten units of LAUSD's professional staff reported directly to Mr. Thompson. Mr. Thompson retired from service to the LAUSD in July 1997.

Upon Mr. Thompson's retirement in 1997, Ruben Zacarias became Superintendent of the LAUSD. Prior to becoming superintendent, Dr. Zacarias served the LAUSD as the Deputy Superintendent from 1992 to 1997. Under an organizational change in the 1993-1994 school year, all Divisions of the LAUSD reported through the Deputy Superintendent's office to the Superintendent's office. Dr. Zacarias stated to the Internal Auditor that he was in fact not involved in property acquisition and development issues during the time he served as Deputy Superintendent, notwithstanding the nominal organization chart showing all Divisions reporting through his office.

---

[44] The names of these Divisions have been changed periodically during the past nine years.

[45] California Education Code §5200.

During the time of the acquisition, environmental assessment and development of the Belmont project, the Superintendent's office had responsibility for managing and coordinating the activities of the LAUSD Divisions to ensure that project management responsibilities were carried out.

C. Divisions

Outside of the LAUSD School Board staff (which includes the Board Secretariat and the Independent Analysis Unit) and the Superintendent's immediate staff, the first level of LAUSD's senior management are division heads. The LAUSD divisions with responsibility for Belmont site acquisition, environmental assessment and development include the following: Business Services Division, Facilities Services Division, Finance Division,[46] and the General Counsel.[47]

- Business Services Division: During the period of 1990 to the present, Mr. David Koch has been head of the Business Services Division. First as Business Manager, or Division Administrator, Business Services, and now as the Chief Administrative Officer.

- Facilities Management Division: During the period of 1990 to 1995, Mr. C. Douglas Brown was the division head of the Building Division (which included facilities construction and real estate acquisition functions). In the early 1990's the functions of the Facilities Division were divided between the Building Services Division, which dealt with day-to-day operational issues, and the New Facilities Unit (under the supervision of Dr. Bonnie James), which included Project Managers, the Construction Branch and the Real Estate and Asset Management Branch.[48] In the 1994-1995 school year this division was renamed as the Facilities and Asset Management Division. In the 1995-1996 school year, Ms. Elizabeth Louargand assumed the position of division head of the Facilities Services Division. Ms. Louargand served as head of Facilities until May 1999. Ms. Lynn Roberts is currently head of the Facilities Division.

- General Counsel: During the period of 1990 to present, Mr. Richard K. Mason served as supervising counsel to the LAUSD regarding Belmont project, although Mr. David Cartwright of O'Melveny & Myers LLP ("O'Melveny") was outside legal and apparently had primary responsibility for providing day-to-day counsel on Belmont. In addition, Ms. Lisa Gooden (who previously worked with Mr. Cartwright on Belmont while she was an attorney at O'Melveny, later served as counsel to the Office of Planning and Development for the years 1996 to 1998 with responsibilities that included Belmont;

---

[46] The evaluation and function of the Finance Division will be addressed in the Internal Auditor's second report.

[47] The names of these Divisions have changed during the 1990 to 1999 period. Letter from Richard Mason to Bryan Steele, dated February 12, 1999. [IA-92142-158] *See* Exhibit 245.

[48] *Id.*

D. Branches

Following division heads, the next level of LAUSD Supervisory staff are branch heads. The following branch offices had key responsibilities for Belmont. Within the Facilities Services Division, the Real Estate and Asset Management Branch ("Real Estate Branch" or "REAMB") had the key responsibility in the acquisition of the Belmont site. The Director of the Real Estate and Asset Management Branch also serves as the LAUSD's primary California Environmental Quality Act ("CEQA") officer.[49] The Project Management and Construction Branch ("PMCB") had the responsibility for overseeing the construction of LAUSD school facilities.

- Real Estate and Asset Management Branch: During the period of 1990 to the present, Mr. Robert Niccum has been head of the Real Estate Branch. On February 1, 1993, David W. Koch, Business Manager, C. Douglas Brown, Deputy Business Manager, Robert Niccum, Director of Real Estate, and Elizabeth Harris, Realty Agent, were "designated as CEQA officer of the District for the purpose of meeting the requirements of CEQA as it may apply to any lease-purchase project of the District.[50] In 1995, the Board of Education designated the following individuals as CEQA officers: Elizabeth Louargand, Robert Niccum and Elizabeth Harris.[51]

- Project Management and Construction Branch: During the period of 1990 to 1999, the Design and Construction Branch functioned separately from the Real Estate Branch.[52] In the 1994-1995 school year, Janalyn Glymph became Director of the Facilities Planning & Analysis Branch, which was renamed the Project Management and Construction Branch ("PMCB") the next year. Ms. Glymph was Director of the PMCB until the February 1999. Mr. Raymond Rodriquez has been the Director of the PMCB for the period of February 1999 to the present. This function has now been renamed to the Construction Support Services Office.[53]

Within the Business Services Division, the Environmental Health and Safety Branch ("EHSB" OR "EHS Branch") had the key LAUSD role in the environmental assessment of

---

[49] *Id.*

[50] Department of General Services, State Allocation Board, Authorized Signatory Form, dated February 1, 1993. [BL-00041] *See* Exhibit 246.

[51] Letter from Richard Mason to Bryan Steele, dated February 12, 1999. [IA-92142-158] *See* Exhibit 245. Ms. Elizabeth Harris has since retired from the LAUSD.

[52] *See* Attachment 3 for LAUSD organization charts.

[53] Interview with Raymond Rodriquez, dated May 20, 1999.

Belmont. The EHS Branch has experienced a tremendous amount of instability and a high rate of turnover in its staff (4 new directors in 3 years) during the development and construction phase of Belmont.

- Environmental Health and Safety Branch: During the period of 1990 to December, 1996, Ms. Susie Wong was head of this branch. During the 1997-1998 school year, Mr. Hamid Arabzadeh was head of this branch for a short period of time. In 1998, Mr. Arabzadeh was replaced by Mr. Tom Boxwell, who also headed the branch for only three months. This branch is now under the supervision of acting branch head Ms. Yi Hwa Kim.[54]

E. Office Of Planning And Development

The Office of Planning and Development ("OPD") was established by the LAUSD Board in the 1993-1994 school year and reported at all times directly to the Superintendent's office.[55] This OPD was established by the Superintendent's Office to function outside the normal division and branch reporting relationships. The Superintendent and LAUSD School Board assigned OPD a variety of chores, including the general administrative management of Belmont through its development and pre-construction phases. Dominic Shambra was the first and only Director of OPD. Mr. Shambra's statement to the Internal Auditor indicates that his overall project management responsibility for the Belmont project did not begin until August 1, 1994, when the LAUSD School Board formally approved the Belmont project concept. Mr. Shambra has stated that prior to August 1994, Belmont was the responsibility of a team of senior managers, including Mr. Richard Mason, General Counsel, David Koch, Business Services, Doug Brown, Facilities, and Robert Niccum, Real Estate Branch. The Internal Auditor has received contradictory statements from Mr. Koch, Mr. Mason and Mr. Niccum, who have reported that Mr. Shambra became involved in the Belmont site acquisition, environmental assessment and development as early as the Spring of 1993, when Mr. Shambra coordinated the acquisition of the 24 acre Shimizu site (see below).

Mr. Shambra reported to Superintendents Anton, Thompson and briefly to Superintendent Zacarias, who dissolved OPD in the summer of 1997.[56] The LAUSD School Board also authorized the OPD to retain outside expertise in several areas, including financial, legal and project consulting.[57] According to his March 1997 job description, Mr. Shambra's responsibilities included the following:

- Serves as District representative to government agencies including the State Allocation Board, the Office of Public School Construction, the Community Redevelopment Agency and the state and federal departments of education.

---

[54] The Internal Auditor is been informed that a nationwide search resulted in a recently named new director of the EHS Branch.

[55] Interview with Sidney Thompson, dated August 9, 1999.

[56] Interviews with Dominic Shambra, dated March 29, 1999 and August 9, 1999.

[57] Interviews with Dominic Shambra, dated March 29, 1999 and August 9, 1999.

- Administers the budget for all funds generated by special agency agreements; resolves conflicts related to technical implementation of agreements; negotiates new agreements and implementation procedures in association with District and non-District legal counsel and the appropriate District divisions.

- Directs and monitors the activities of District architectural, financial, legal and negotiation consultants.

- Serves as liaison with all District personnel involved in the development of instructional facilities, with the private sector, with elected representatives and with community representatives regarding facility concepts and funding concerns.

- Serves as a resource to the Superintendent, executive staff and Board of Education members; prepares and presents correspondence and reports regarding negotiations with government agencies and the private sector and information about potential public and/or political ramifications of District facility development activities.[58]

With regard to the scope of Mr. Shambra's authority and responsibility over the development of the Belmont project, it was made clear by Superintendent Anton and Superintendent Thompson that Mr. Shambra assigned the lead management responsibility for Belmont, especially for the site acquisition and funding phases.[59] Mr. Shambra has informed the Internal Auditor that he acted as a project "coordinator" from August 1994 to February 1998. Mr. Shambra also informed the Internal Auditor that, prior to mid-1994, he was a member of the team assigned to acquire property generally for LAUSD.[60] The LAUSD School Board also designated Mr. Shambra as the authorized representative LAUSD to file applications for all new construction projects under the State School Facilities Act.[61] The Internal Auditor has received contradictory statements from the majority of LAUSD staff, who have stated that Mr. Shambra was the project executive for the Belmont project. The OPD was formally disbanded in July, 1997 by Superintendent Ruben Zacarias. Mr. Shambra retired from the LAUSD in February of 1998.

---

[58] Attachment to Letter from Richard Mason to Bryan Steele, dated February 12, 1999. [IA-92142-158] *See* Exhibit 245.

[59] Interview with Sidney Thompson dated August 9, 1999.

[60] Interviews with Dominic Shambra, dated March 29, 1999 and August 9, 1999.

[61] LAUSD Board Report No.2, February 1, 1993. [BL-00039-40] *See* Exhibit 247.

CHAPTER 4

THE SCHOOL SITE SELECTION PROCESS

The standard LAUSD procedure for acquiring property was established in August 1987, when the former LAUSD School Board adopted a nine step site selection process for new school construction.[62] The following steps were adopted by the School Board:

- Step 1: Staff prepares a study area proposal for new school construction based on an analysis of demographic data and feasibility issues, as well as the establishment of the boundaries of a study area. LAUSD School Board's Building Committee considers the proposal.
- Step 2: Notify public of study area. Gather more information about study area. Hold public meetings to get ideas for possible sites.
- Step 3: Staff analyzes study area, identifies potential sites and presents findings to Building Committee.
- Step 4: Staff recommends a site for intensive study. LAUSD School Board's Building Committee considers recommendation.
- Step 5: LAUSD School Board considers appointment of appraisers and environmental consultant.
- Step 6: The public is notified that a site has been selected for intensive study to obtain appraisal, environmental and relocation information. Public meeting held.
- Step 7: Appraisals and environmental impact report prepared. Staff estimated that "[i]f a full Environmental Impact Report is contemplated, this step could take anywhere from 12 to 24 weeks, depending on the priority which is assigned to the project."[63] Staff stated that "a full Environmental Impact Report [could not be] completed in less than 12 weeks. A Negative Declaration, on the other hand, could be completed in as little as six weeks."[64]
- Step 8: LAUSD School Board makes final decision on project site following completion of an Environmental Impact Report and appraisal, following

---

[62] Inter-Office Correspondence, Bonnie R. James to LAUSD School Board's Building Committee, dated January 20, 1989. [IA-14252-261] *See* Exhibit 248.

[63] *Id.* [at IA-14259]

[64] *Id.*

further public hearing. The LAUSD School Board approves the Environmental Impact Report and authorizes the LAUSD to proceed with the site acquisition.

- Step 9: Staff begins site acquisition. Following the LAUSD School Board's approval, the Director of Building Services is authorized to submit appraisal and environmental documentation to the State in order to obtain State funding for land acquisition. After the State authorizes purchase of the land and full apportionment of funds, LAUSD staff begin the process of acquiring the land.

In evaluating potential sites for new school construction, the LAUSD School Board required that the following factors be considered:[65]

(1) Displacement of owner-occupied and tenant occupied homes and apartments;

(2) Location in areas to relieve overcrowding;

(3) Traffic congestion and hazards should be avoided;

(4) Topography should be relatively level;

(5) Accessibility to the school should be available from all sides of the school;

(6) Environmental conditions of the site, "should, to the greatest extent possible, provide a healthy and safe environment for students and staff";

(7) Cost of the site should be the lowest among equally situated alternative sites.

---

[65] *Id.* [at IA-14261]

CHAPTER 5

SELECTED CALIFORNIA LAWS GOVERNING SCHOOL FACILITY ACQUISITION

A. The California Education Code

Under state law, the selection of school sites and the design and construction of schools are regulated by local school boards and the State Department of Education. The obligations of the LAUSD Board to ensure that schools are constructed safely are established under the California Education Code as follows:

1. Development, Construction and Funding Options For Belmont

Generally, the LAUSD, subject to state approval, may construct any project and acquire all property necessary to do so, on any terms and conditions deemed advisable.[66] The LAUSD School Board has authority to acquire, construct, complete, manage and control all projects authorized by the State Allocation Board ("SAB").[67] The SAB may pay costs from any funds made available to the SAB by the State of California or any other funds provided from any source, including proceeds from the sale of bonds, to be expended for accomplishing the purposes described in the Education Code.[68]

State agencies, boards, and commissions responsible for allocating funds on a project-by-project basis to local agencies for projects which may have a significant effect on the environment are required to obtain a detailed statement from the applicant agency prior to allocating funds (other than funds solely for projects involving only feasibility or planning studies for possible future actions) for a project which the agency, board, or commission has not approved, adopted, or funded.[69]

School site determinations begin with a school district applying to the State Department of Education ("State Department") for approval of a particular school site. Whenever a school district files an application for construction, the State Department must require the school district to submit to the SAB and the State Department a plan for construction, and to obtain written approval from the department that the plan complies with standards that are established by the department.[70] The State Department must also require the school district to submit plans to the State Department of General Services and to obtain the written approval of that department's

---

[66] *See* Ed. Code §17010.
[67] *See* Ed. Code §17012.
[68] *See* Ed. Code §17011.
[69] *See* California Public Resource Code §21150.
[70] *See* Ed. Code §17017.5.

Division of the State Architect. The applicant district shall be viewed by all agencies as the "lead agency" with regard to any project ultimately funded.[71]

The State Department may approve an application submitted by a school district for the advanced purchase of land and preparation of plans. The State Department may also apportion project funding for the portions of the project for which the district is ready to proceed. Before the State Department may approve a project, any requirement imposed by the State Department, such as requiring the project to meet building costs or area standards and related guidelines as a condition of for funding, must be satisfied and certified as to compliance by the district.[72]

The California Legislature determined that it is the policy of the state to bear a proportionate share and/or aid a school district in the construction costs of school buildings in the area affected.[73] The Director of General Services shall provide any assistance to the SAB that it may require.[74] The SAB shall give priority in allocating funds to urban districts to those districts where the children will benefit most from schoolhouse facilities.[75]

Each school district which desires an apportionment shall submit through its governing board to the State Department an application for funds. However, estimates of costs for new construction or equipment appearing in an application shall not exceed typical current costs of comparable new construction or equipment by school districts in the same area not receiving an apportionment under this chapter.[76]

The SAB may approve an application submitted by a school district under Education Code §19263.[77] If the SAB determines that the actual cost is in excess of the estimated cost of the specific school plant facilities or sites for which an apportionment to a district has been made, or for which a district's application has been approved in whole or in part pursuant to this section, the SAB may make an additional apportionment to the district in an amount equal to the excess even though the additional apportionment will result in the total apportionments to the district exceeding the amount of the application originally approved by the SAB. Apportionments may be made irrespective of whether there is on deposit at the time thereof a sufficient amount in the Urban School Construction Aid Fund to permit the payment of the apportionments.

The SAB prescribes in detail what it deems necessary to accomplish the purposes for which moneys apportioned by it or which it requires the district to contribute toward, or in reduction of the cost of a project, may be expended, and the prescription shall be binding upon the governing board of the district, except that it maybe changed or modified by the SAB for any cause that the SAB sees fit.[78]

---

[71] *See* Ed. Code §17025.
[72] *See* Ed. Code §17017.5.
[73] *See* Ed. Code §§16501, 16701
[74] *See* Ed. Code §16703
[75] *See* Ed. Code §16705
[76] *See* Ed. Code §16713.
[77] *See* Ed. Code §16714.
[78] *See* Ed. Code §16725.

The governing board of each school district to which an apportionment has been made under this chapter shall expend the moneys in the urban school construction fund of the school district exactly as apportioned by the SAB and only for the purposes for which the moneys were apportioned to the district, and for no other purpose, and shall make the reports relating to the expenditure of the moneys that the SAB and the Controller shall require.[79]

A school district may enter into a joint venture relationship for the purposes of school facilities construction, though a school district entering into a joint venture relationship does so as an independent entity and not as an agent of the SAB. The price for the portion of the project that is funded by the state in a joint venture shall be established through a bidding process as approved by the SAB. All subcontract trade groups that are included within the project shall be determined based upon competitive bidding for each contract group. All subcontracts shall be awarded to the lowest responsible bidder.[80]

The State School Building Lease-Purchase Fund and the proceeds from the sale or lease of surplus school property are two other sources available to school districts to finance the construction of school facilities to relieve overcrowding.[81]

2. Leroy F. Greene Facilities Act Of 1988

Beginning in 1998, changes were made to require the State Department to adopt guidelines for use by districts by June 30, 1999, to achieve measurable reductions in the costs of school facilities construction. The guidelines will include all of the following: (1) Mechanisms designed to reduce the costs of professional fees, (2) Mechanisms designed to reduce the costs of site preparation, (3) Recommendations for the use of alternate cost-saving construction materials and methods, (4) Recommendations regarding the joint use of core facilities, (5) Mechanisms designed to reduce costs by incorporating efficiencies in school site design, and (6) Recommendations regarding the use of cost-effective, efficient reusable facility plans.[82]

In addition, the State Department shall have no authority to set the level of the fees of any architect, structural engineer, or other design professional on any project.[83] However, the State Department shall not apportion funds to any school district, unless the applicant school district has certified to the State Department that the services of any architect, structural engineer, or other design professional have been obtained pursuant to a competitive process.[84]

Title to all property acquired, constructed, or improved with funds made available under this chapter shall be held by the school district to which the State Department grants the funds. The applicant school district shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, school buildings.[85] The State Department shall require the school district to insure against public liability or property damage in connection with any facility constructed or modernized with an apportionment under this chapter.[86]

---

[79] *See* Ed. Code §16729.

[80] *See* Ed. Code §17060.

[81] *See* Ed. Code §§17100 and 17008.

[82] *See* Ed. Code §17070.33.

[83] *See* Ed. Code §17070.35

[84] *See* Ed. Code §17070.50.

As a part of its application, a school district shall certify that it has considered the feasibility of the joint use of land and facilities with other governmental entities in order to minimize school facilities costs. Funds provided pursuant to this chapter for growth and modernization may be used for the school portion of joint-use facilities.[87]

3. The Role Of The California Department Of General Services

The Department of General Services is comprised, in part, of the State Architect, Procurement, and Public School Construction units. The Department is to partner with the Legislature and the Governor to streamline processes, add consistency, and make government business easier. The Department of General Services is responsible for, among other things, supervising the design and construction of any school building to ensure that plans and specifications comply with the rules and regulations adopted to ensure that the construction has been performed in accordance with the approved plans and specifications. The Department of General Services shall approve or reject plans for the construction of any school building, regardless of cost, before the plans are adopted by the school board.[88, 89] School districts may not obtain contracts for construction of a school building without obtaining the written approval of the proposed plans by the Department of General Services are obtained. Application for approval of plans shall be accompanied by the plans, accurate specifications, structural design computations, and estimates of cost.[90]

When a school building constructed in accordance with plans and specifications approved by the Department of General Services is completed, a notice of completion is filed, and all final verified reports and all testing and inspection documents are submitted to the Department of General Services. The department shall issue a certification that the school building complies with the requirements of this article.[91]

4. LAUSD And The State Department

As a result of these rules, LAUSD could apply for a project from the California Department of Education under the School Facilities Act for the purchase of land and preparation of plans and specifications. The acquisition of the site and the plan preparation must be based on justification documents for the total school facility. A school district could later apply for subsequent projects to complete the total school facility.[92] LAUSD could contract with a firm for construction project management services provided a performance bond was required from all building contractors hired in order to ensure the completion of performance under the contract.[93]

---

[85] *See* Ed. Code §17070.70.
[86] *See* Ed. Code §17070.97.
[87] *See* Ed. Code §17070.90.
[88] Recodifing in 1996 the subject matter from §39140. *See* Ed. Code §17280.
[89] Recodifing in 1996 the subject matter from §39143. *See* Ed. Code §17295.
[90] Recodifing in 1996 the subject matter from §39145. *See* Ed. Code §§17297, 17299.
[91] Recodifing in 1996 the subject matter from §39157. *See* Ed. Code §17315.

LAUSD was required to obtain the written approval of the State Department of Education before seeking authorization from that board for the selection of any school site or for a contract for the construction of any new school building.[94]

As a self-certifying district, LAUSD needed to certify to the State Department of Education that the site selection, building plans and specifications complied with the standards adopted by the State Department pursuant to Education Code §17251. LAUSD also needed to maintain documentation of its determinations made as required by the State Board. The State Department could audit those determinations.[95]

LAUSD was required to furnish its own architect or structural engineer for necessary structural engineering and supervision of construction.[96] Any selection of professional services from private architectural, engineering, environmental, land surveying, or construction project management firms are to be based upon demonstrated competence. The procedures utilized could not result in unlawful activity, including rebates, kickbacks, or other unlawful consideration, and specifically prohibited government agency employees from participating in the selection process if those employees had relationships with a business entities seeking a contract.[97]

5. The Unique Requirement of Education Code §17213

As noted in Chapter 1, SB 2262 established a bright-line test to preclude acquiring property for use as a school site that was a hazardous waste disposal site or contained a pipeline carrying hazardous materials. Codified as Education Code §17213, this provision is important enough to this *Report of Findings* to set forth in full:

> The governing board of a school district shall not approve a project involving the acquisition of a school site by a school district unless all of the following occur:
>
> (a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following: (1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been

---

[92] California Education Code ("Ed. Code") §17020.
[93] Ed. Code §17019.3.
[94] Ed. Code §§17251, 17024.
[95] Ed. Code §17024.
[96] Ed. Code §17266.
[97] Government Code ("Gov. Code") §§4526, 4527.

49

removed; (2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code; and (3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.

(b) The lead agency, as defined in Section 21067 of the Public Resources Code, preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schools site is located and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed school site which might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings: (1) Consultation identified none of the facilities specified in subdivision (b). (2) The facilities specified in subdivision (b) exist, but one of the following conditions applies: (A) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school, or (B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(d) As used in this section: (1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code. (2) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code. (3) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code. (4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code. (5) "Hazardous waste disposal site" means any site defined in Section 25114 of

> the Health and Safety Code." (6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code. (7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.[98]

6. The State Department's Safety Policy

In addition to the site selection guidelines developed by the LAUSD, the California Department of Education adopted its own guidelines in 1989.[99] These guidelines are used prior to approval of site selection by school districts throughout the State. In selecting a site for a school, the State advises school districts to consider twelve criteria, including, (1) safety, (2) location, (3) environment, (4) soils, (5) size and shape, (6) topography, (7) accessibility, (8) public services, (9) utilities, (10) cost, (11) political implications, and (12) availability.[100]

With respect to environmental safety concerns the State advises school districts as follows:

> **The presence of potentially toxic and hazardous substances on or in the vicinity of a prospective school site is another concern relating to student, staff, and public safety**. Those responsible for site evaluation should give special consideration to (1) landfill areas on the site; and (2) **proximity of the site to dump sites, chemical plants, refineries, fuel storage facilities**, nuclear generating plants, abandoned farms and dairies, and agricultural areas in which pesticides and fertilizers have been heavily used. From a nuisance standpoint the site selection committee also should consider whether a site is located near or downwind from a stockyard, fertilizer plant, soil processing operation, or sewage treatment facility (emphasis added).[101]

The State Department apparently offered no opinion on SB 2262 during its legislative consideration, and did not amend its guidelines in response to the enactment of SB 2262 in 1990. However, the State Department did begin to revise these guidelines in the spring of 1999, apparently in part in reaction to the public debate over Belmont.

---

[98] Added by Stats.1996, c. 277 (S.B.1562), §3, operative Jan. 1, 1998. Subject matter from 39003 added by Stats. 1990, c. 1602 (S.B.2262), §1. Amended by Stats.1991, c. 1183 (A.B.928), §1.)(emphasis added).

[99] California Department of Education, School Facilities Planning Division, "School Site Selection and Approval Guide," 1989. *See* Exhibit 339.

[100] *Id.*, at 2.

[101] *Id.*, at 5.

B. Environmental Statutes Implicated by Belmont[102]

1. California Environmental Quality Act

The purposes of the California Environmental Quality Act ("CEQA") are to: (1) inform governmental decision makers and the public about the potentially significant environmental effects of proposed development activities, (2) identify ways that environmental damage can be avoided or significantly reduced, (3) prevent avoidable damage to the environment by requiring changes in projects or mitigation measures when feasible, and (4) disclose why a government agency will approve a project if significant environmental effects are involved.[103]

CEQA and its implementing regulations as set forth in Title 14 of the California Code of Regulations apply to all public agencies, including school districts, that undertake or fund activities that may have a significant effect on the environment. CEQA also applies to public agencies that issue leases, permits, licenses, certificates, or other entitlements to pursue activities that may have a significant impact on the environment.[104] CEQA may be triggered by an application submitted to a public agency for approval or by an agency's internal decision to consider a project. Three major phases in the development process are provided by CEQA: the pre-application phase, the application phase and the lead agency review phase.

a. The Pre-Application Phase

During this phase, the private party developer or a government agency developer completes the conceptual and preliminary design work for a project and prepares a project proposal. The primary objective of this phase is to identify the appropriate permitting agencies and to commence assembling the information that will be required. The applicant or agency staff may conduct feasibility studies, due-diligence reviews, or constraint analyses. By the end of the pre-application phase, the developer-applicant should understand the detailed project information required and should know the permitting agencies that will be involved along with the general level of environmental analysis to be performed.

The agency that will be most involved with a project becomes the "lead agency."[105] In the case of Belmont, LAUSD was both the government agency developer and the lead agency responsible for determining whether CEQA applied to the Belmont site. LAUSD was required to meet its responsibilities under CEQA without relying on comments from other public agencies or private citizens as a substitute for conducting its own work.[106]

---

[102] All of the following environmental law discussion was the subject of learned discussion in 1990 and thereafter in the leading real estate practice treatise in the state, **Current Law of California Real Estate**, Second Edition, by Harry D. Miller and Marvin B. Starr (Bancroft-Whitney, 1990), §29:35 *et seq.*, pp. 153-219.

[103] *See* Resources Code §21000 *et seq.*; 14 CCR §15002.

[104] *See* Resources Code §21002 and 14 CCR §§15001 and 15002.

[105] *See* Ed. Code §17025; Resources Code §21067; and 14 CCR §§15050, 15051, and 15367

[106] *See* 14 CCR §15020.

b. The Application Phase

The application phase of CEQA commences with the filing of the necessary permit application forms along with detailed project descriptions and the minimum support documentation with the respective agencies. Before a lead agency accepts as complete an application for any development project, the applicant shall consult lists sent to the city or county by the Secretary of the California Environmental Protection Agency, and shall submit a signed statement indicating whether the project is located on a site that is included on any of the lists compiled.[107] *See* Government Code §65962.5. During the application phase, the lead agency determines whether a proposed project is subject to CEQA.[108]

c. The Review Phase

During the review phase the lead agency:

- Prepares an *initial study* which, is utilized to determine what further CEQA documents are required.[109] Consultations may be held with responsible agencies during this time.[110]

- If the initial study shows that the project is subject to CEQA but will not have a significant impact on the environment, the lead agency prepares a *negative declaration*. If the initial study reveals potential significant effects but that the project if modified renders the effects insignificant, the lead agency prepares a *mitigated negative declaration*.[111]

- If the initial study shows that the project may have one or more significant effects, the lead agency must circulate a *notice of preparation ("NOP")* and must consult with responsible agencies as to the content of further environmental analysis.[112] The lead agency then prepares and circulates a *draft environmental impact report ("DEIR")*.[113] All agencies and the public may comment on the DEIR and at the close of the review and comment period, the lead agency responds and prepares a *final environmental impact report ("FEIR")*.[114] The report must find that each significant impact will be mitigated below the level of significance where feasible, or that social or economic concerns justify the approval of the project where significant effects cannot be mitigated.

---

[107] The California Department of Toxic Substances Control compiles, at least annually, a list of all of the following: (1) All hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code; (2) All land designated as hazardous waste property or border zone property; (3) All information received by the Department of Toxic Substances Control on hazardous waste disposals on public land; (4) All sites listed pursuant to Section 25356 of the Health and Safety Code; and (5) All sites included in the Abandoned Site Assessment Program. The California Department of Health Services compiles at least annually a list of all public drinking water wells that contain detectable levels of organic contaminants and that are subject to water analysis pursuant to Health and Safety Code §116395. Also, the State Water Resources Control Board compiles, at least annually, a list of all underground storage tanks for which an unauthorized release occurred. The local enforcement agency shall compile a list of solid waste disposal facilities from, which there is known migration. The Secretary of the California Environmental Protection Agency consolidates all of this information.

[108] *See* 14 CCR §§15061, 15261, 15263, and 15300.

[109] *See* CCR §15021.

[110] *See* Resources Code §21080.3.

[111] *See* Resources Code §21064; and 14 CCR §15070, 15071.

- Finally, the lead agency must approve or deny the permit and file a *notice of determination ("NOD")*.[115]

2. CERCLA -- The Federal Superfund Law

The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") 42 USCS §§9601, has three principal components. CERCLA:

(1) empowers the federal government or aggrieved private parties to take or require corrective action upon the release or threatened release of a hazardous substance;

(2) establishes a fund to finance clean up of hazardous substance release sites by the government, and

(3) provides for remediation by owners and operators of hazardous substance release sites.

CERCLA's reach extends to all properties affected by any one of a significant number of hazardous substances as defined by the U.S. Environmental Protection Agency pursuant to that agency's regulatory power under CERCLA.[116] However, CERCLA does not regulate petroleum, crude oil, natural gas, or gasoline under what is commonly known as the "petroleum exclusion."[117]

Liability under CERCLA is normally strict as well as joint and several unless the defendants establish a reasonable basis for apportioning damages among themselves. Additionally, liability is retroactive. A defendant may be held liable for releases or clean up efforts which occurred before CEQA was enacted in 1980.[118] In a private lawsuit, a plaintiff may recover all appropriate response costs which it occurred in connection with a covered release.[119]

---

[112] *See* 14 CCR §15065.

[113] *See* Resources Code §§21061, 21082.1; and 14 CCR §§15020, 15021, 15081, 15081.5, and 15084.

[114] *See* 14 CCR §§15089, 15090, and 15231.

[115] *See* Resources Code §21108; and 14 CCR §§15075 and 15095.

[116] *See* 42 U.S.C. §9602(a).

[117] *See* 42 U.S.C. §9601(14). For example, even leaded gasoline is excluded from the regulation under CERCLA. *Wilshire Westwood Associates v. Atlantic Richfield Corp.*, 881 F.2d 801, 803-804 (9th Cir. 1989).

As amended by the Superfund Amendment and Reauthorization Act ("SARA") in 1986, CERCLA includes the so-called "Innocent Landowner Defense." A buyer must conduct all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial and customary practice to qualify for the "innocent purchaser" defense to minimize liability and avoid the otherwise sweeping reach of CERCLA.[120] To invoke this defense, the owner must show that the release of the hazardous substance occurred before he or she purchased the property; that at the time he or she acquired the property he or she did not know about the release despite due diligence in investigating the property; that he or she exercised due care with respect to the hazardous substance; and finally, he or she took precautions against the foreseeable acts or omissions of any third party.

3. Carpenter-Presley Tanner Hazardous Substances Account Act

The Carpenter-Presley Tanner Hazardous Substances Account Act is the California equivalent to the federal Superfund law, and was enacted in 1981.[121] Liability for clean up costs is imposed on responsible parties following a release of a hazardous substance. Categories of liable defendants and statutory defenses exist.[122] The number and types of hazardous substances covered by California's Superfund statute are broader than that of CERCLA, but California's Superfund Act is substantially similar to CERCLA (*i.e.*, California's Superfund also includes the "petroleum exclusion"). Where an owner or other party could be liable for clean-up costs if the action were brought by the federal government under CERCLA, he or she also will be liable for clean-up if the action is brought by the government under California's Superfund Act. The DTSC administers the California Superfund Act.

4. Federal Resource Conservation And Recovery Act

The Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 USCS §§6901 *et seq.*, is the primary federal statute regulating hazardous wastes "from the cradle to the grave." *Id.* Specifically, it establishes standards for the creation, transportation, treatment, storage and disposal of hazardous wastes. Significantly, RCRA does not contain the "petroleum exclusion" present in CERCLA.

In general, RCRA requires a permit before hazardous waste may be treated, stored, or disposed of on a site, and regulates these procedures through conditions imposed in the permit process. RCRA gives the administrator of the U.S. Environmental Protection Agency the power to compel clean up of contaminated sites by administrative order or by a civil lawsuit.

---

[118] *See Idaho v. Bunker Hill*, 635 F.Supp. 665, 671 (1986.)

[119] *See* 42 USCS §9607(a)(2)(B). *See also*, 42 USCS §9613.

[120] *See* 42 USCS §§9067(b)(3) and 9061 (35)(a).

[121] *See* Health & Safety Code §25300 *et seq.*

[122] *See* Health & Safety Code §25323.5.

RCRA regulates solid wastes which are hazardous to human health or the environment. RCRA establishes two liability standards involving the clean up of hazardous substances. First, a person may be subject to an administrative clean-up order or a lawsuit seeking an injunction forcing clean up if he violates any provision of RCRA. Second, where there is an imminent and substantial endangerment of health or the environment, suit may be brought against any person, including a past or present owner or operator of a facility.[123]

5. California's Hazardous Waste Control Law

The California Hazardous Waste Control Law ("HWCL"), first enacted in 1972 and codified at Health & Safety Code §25100 *et seq.* is the state law equivalent to RCRA (though the HWCL was adopted first and provided a model for the later enactment of RCRA). The HWCL broadly regulates the creation, handling, and disposal of hazardous wastes. Like its federal counterpart, the HWCL regulates wastes from the cradle to the grave. The HWCL is principally implemented through an extensive permitting process. The clean up provisions of the HWCL principally concern hazardous waste and extremely hazardous waste. To date, over 750 substances have been identified as subject of the HWCL. Like RCRA and unlike CERCLA, the HWCL does not contain a "petroleum exclusion." DTSC administers the HWCL in California.

Though principally a permitting statute, the HWCL has broad and tough enforcement provisions. DTSC may order a person to clean up a contaminated site whenever it determines that person has violated any provision of the HWCL, and may pursue significant civil and criminal sanctions.[124] Since a permit is required to dispose of wastes included within the HWCL, any person who abandons, deposits, or otherwise disposes of such wastes without a permit has violated the HWCL and may be compelled to clean up the contaminated site. DTSC can also order clean up of a site regardless of fault if it determines that there has been a release.[125]

6. California's Duty To Disclose The Presence Of Hazardous Substances On Real Property

California has a specific statute, enacted in 1987, that requires any owner of nonresidential property who knows, or has reasonable cause to believe, that any release of a hazardous substance is located on or beneath his or her property to disclose this fact in writing to any prospective buyer or tenant before consummating the transaction.[126]

7. California's Duty To Report Hazardous Substance Spills

California also requires that the owner of property on which a reportable release of hazardous substances occurs after January 1, 1994, must report that release to DTSC with 30 days.[127]

---

[123] *See* 42 USCS §6973(a).

[124] *See* Health & Safety Code §25187.

[125] *See* Health & Safety Code§25187.

[126] *See* Health & Safety Code §25359.7.

[127] *See* Health & Safety Code §25359.4.

8. California's Public Property Owner's Duty To Report Hazardous Waste

In 1984, California adopted a specific statute requiring any city, county or state agency (including school districts) which, as an owner, lessor or lessee of real property, knows or has probable cause to believe that a disposal of hazardous waste which is not authorized pursuant to the HWCL has occurred on, under, or into the land which the city, county or state agency owns or leases, to notify the DTSC and work with that agency to create and implement a hazardous waste management plan for that property.[128]

9. California's Hazardous Property Designation Statute

California adopted in 1984 the "Hazardous Waste Disposal Land Use" statute, commonly known as the hazardous property law.[129] This statute requires that a property owner who intends to build on the property (including the construction of schools) who knows or has probable cause to believe that a significant disposal of hazardous waste has occurred on the property must submit an application for designation of that property as a "hazardous waste property."[130]

All of these statutes, both state and federal, were implicated by the Belmont development.

---

[128] *See* Health & Safety Code §25242.

[129] *See* Health & Safety Code §25221 *et seq.*

[130] *See Beck Development Co. v. Southern Pacific Transportation Company*, 44 Cal.App.4th 1160, 1183-1193 (1996) for a complete discussion of this statute.

CHAPTER 6

THE BELMONT LEARNING COMPLEX SITE GEOGRAPHY AND BACKGROUND

The Belmont Learning Complex is located on an approximately 35-acre site immediately west of downtown Los Angeles in the Temple/Beaudry neighborhood.[131] The L-shaped site is generally bounded by Temple and Colton Streets to the north, Boylston and Toluca Streets to the west, Beaudry Avenue to the east, and First Street to the south. Figure 1 illustrates the Belmont project location. Figure 2 depicts the Belmont project site and planned development. Figures 3 and 4 illustrate the architect's depiction of the completed development.[132]

A. Two Stage Site Acquisition

The Belmont site was acquired in several stages. The first major stage of acquisition involved the condemnation or purchase of separate parcels, originally for purposes of developing a middle school, that were ultimately consolidated into LAUSD ownership of an approximately 11-acre parcel near Temple and Beaudry Avenues (bounded to the south by Colton Street),. Throughout this *Report of Findings*, this parcel will be referred to as the "11-acre" or "Temple and Beaudry" parcel. The second stage of acquisition was accomplished through a single purchase agreement with a company affiliated with Shimizu, a Japanese construction corporation, for a 24-acre parcel at the southwest end of the current Belmont site. Throughout this *Report of Findings*, this parcel will be referred to as the "24-acre," "Shimizu" or "First and Beaudry" site. Figure 5 generally depicts the 11-acre and 24-acre parcels.

B. Site History[133]

Previous land use on the Belmont site included residential buildings, automobile repair and painting shops, service stations, an upholstery shop, small commercial operations and oil field production. A number of former streets on the Belmont site have been vacated and closed. The following streets that run parallel with 1st Street have been closed, including Angelina Street, Court Street and Mignonette Street. The following streets that run parallel with Toluca Street have been closed, including Edgeware Road, Bixel Street and Boylston Street. Figure 6 depicts the Belmont site with the original plot and street designations. Photograph 1 depicts the Belmont site in January 1997, prior to the commencement of construction and the closure of streets at the site.

---

[131] The following geographical background is provided to assist in following the discussion of the acquisition and environmental assessment of the Belmont site.

[132] All figures and maps mentioned in this *Report of Findings* can be found immediately following this chapter.

[133] *See* Environmental Strategies Corporation, Draft Remedial Investigation Report at 10, dated June 11, 1999.

Eight underground storage tanks ("USTs"), a waste oil storage tank, and three hydraulic lifts were located in four locations on the Belmont site. Figure 7 depicts the general locations where the USTs were located and removed.

C. Oil Field Operations[134]

The Los Angeles City oil field, as designated by the maps of the State of California Department of Conservation, Division of Oil, Gas and Geothermal Resources ("DOGGR"), is located generally underneath parts or perhaps all of the Belmont site. The long axis of the oil field trends in an east to west direction. Figure 8 depicts the limit of the oil field on DOGGR's maps, which represent the oil field's perimeter as an approximate, nominal line, not a hard and fast boundary. The Los Angeles City oil field was first developed in the 1890s. Figure 9 generally depicts the extent of the oil field in the Los Angeles Basin. The Toluca oil production wells adjacent to the Belmont site have an average depth of 1,000 feet below ground surface, though oil production has been obtained at levels as shallow as 600 feet below ground surface.

Methane and hydrogen sulfide gasses are present in the Los Angeles City oil field as they are in all oil fields. Methane is a colorless, odorless and lighter-than-air gas that has the potential to create hazardous conditions, principally explosivity when confined in an enclosed space or as a gaseous solvent carrying other dangerous chemicals (*i.e,* benzene). Hydrogen sulfide is a colorless, heavier-than-air gas that has a distinct odor similar to the odor of a rotting egg. These two gasses may be released from underground reservoirs to the surface via migration through natural or man-made fractures in the subsurface geology (scientifically known as "petrogenic" gas; colloquially called "wet" methane) or from microbial activity in crude oil impacted soil (scientifically known as "biogenic" gas; colloquially called "dry" methane). Photograph 2 illustrates the extensive presence of crude oil impacted soil during grading and construction activities at Belmont in June 1998.

(as opposed to)

The City of Los Angeles Municipal Code, Chapter IV, Article 1, Division 71, Sections 91.7103.1 and 91.7103.2, delineate the boundaries of the High Potential Methane Zone and Potential Methane Zone established after the 1985 Fairfax area methane explosion problems. According to a letter dated May 12, 1999, the California Department of Conservation, Division of Oil, Gas and Geothermal Resources considers Belmont to be located within the boundaries of a High Potential Zone for gas seepage.[135]

D. Topography[136]

The Belmont site is hilly and varies in elevation from 321 feet above sea level (near the southeast corner of 1st Street and Beaudry Avenue) to 429 feet above sea level (near the corner of

---

[134] *Id.* at 8.

[135] *Id.*

[136] *See* Environmental Strategies Corporation, Draft Remedial Investigation Report at 6, dated June 11, 1999.

Toluca and Colton Streets). Construction grading of the original surface has contoured the site into a series of terraces separated by steep slopes in the middle of the property and at the northern property boundary. Photograph 3 and 4 provide a view of the state of the construction and terraced grading at Belmont as of June 1999.

E. Belmont Project Areas

The Belmont site has been divided into four project areas for purposes of construction. Figure 10 depicts the four areas. The first project area includes the southeast corner of the Belmont site, where the majority of the currently constructed structures.

F. Previous Environmental Sampling

As described in more detail in the ESC report and related California Department of Toxic Substances Control ("DTSC"), as well as later in this *Report of Findings*, LAUSD did not fully characterize the environmental issues present on the entire 35 acre Belmont site. The environmental investigation and sampling prior to the involvement of the DTSC in the fall of 1998 and the current round of additional testing, is depicted in Figure 11.

SORRY

FIGURES 1 THROUGH 11

AND

PHOTOS 1 THROUGH 4

ARE NOT AVAILABLE IN

ELECTRONIC FORM

AT THIS TIME

CHAPTER 7

THE SEARCH FOR A BELMONT SCHOOL SITE

The process of locating what later came to be known as the Belmont Learning Complex began as a search for a middle school in December 1985.[137] The Belmont attendance area had a chronic problem of over-crowding that resulted in the implementation of a busing program to relocate Belmont attendance-area students to other schools within the LAUSD. As of 1996 when the entire Belmont Learning Complex was reviewed under the California Environmental Quality Act, of the approximately 8,000 students living in the Belmont attendance-area, 3,400 students were being bused to other schools.[138]

A. A Belmont Middle School At Temple And Beaudry Site

On August 21, 1989, the LAUSD Board approved the land acquisition program for Belmont New Junior High School No.1 and authorized the Real Estate Branch to begin the environmental review process.[139] The three possible sites were all located within the area under consideration as well for the City of Los Angeles' Central City West Specific Plan.[140] Among three possible sites, LAUSD decided the best site was located near the corners of First and Beaudry.[141] The LAUSD, however, located the site for the planned Belmont New Junior High No. 1 at the corners of Temple and Beaudry in response to an agreement (the "Temple-Beaudry Agreement") with commercial developers of the preferred site.[142]

During the late eighties, Shimizu, a Japanese construction corporation, (then referred to locally as S-P Corporation) envisioned a high density commercial development named "Pacific Basin Plaza" within the Central City West Specific Plan area.[143] Shimizu had begun the process of acquiring property in the vicinity of First and Beaudry for this development. Shimizu viewed the possible condemnation of its property by LAUSD for a school project as a threat to its commercial development plans. Shimizu therefore proposed to develop and construct an affordable housing project on its property in exchange for LAUSD's agreement not to take Shimizu's property at First and Beaudry, but rather to build a middle school on approximately 11 acres of property near to the corners of Temple-Beaudry ("Temple-Beaudry Site"). Members of the LAUSD School Board (as well as local public officials) wanted the construction of affordable housing in the area, and tasked staff and outside counsel, David Cartwright, to negotiate a replacement housing agreement with Shimizu (referred to as the "Temple Beaudry Replacement Housing Agreement") in return for LAUSD's agreement not to condemn the Shimizu property near Temple and First streets.

---

[137] School Board action dated December 19, 1985. [IA-01129] *See* Exhibit 1.

[138] Final Environmental Impact Report, Belmont Learning Complex, October 1996 at ES-2. [BEL-01244-1665] *See* Exhibit 118.

[139] School Board action dated August 21, 1989. [AI-01133] *See* Exhibit 6.

[140] *See* Exhibit A to Mr. Cartwright's memorandum of September 22, 1995. Memorandum of David Cartwright to File, dated September 22, 1995 [OMM0028264-28277] *See* Exhibit 97.

[141] *Id.*

[142] ABB Environmental Services, Inc. Phase I Assessment, May 22, 1990 [OMM0035001-35095] *See* Exhibit 10.

[143] Memorandum of David Cartwright to File, dated September 22, 1995 [OMM0028264-28277] *See* Exhibit 97.

After nearly two years of negotiations, in October 1990, the Temple Beaudry Replacement Housing Agreement was concluded under which replacement housing would be developed near Temple and Edgeware streets.[144] Shimizu and the other developers then began their plans to finalize the Central City West Specific Plan.[145] The Specific Plan detailed certain requirements for infrastructure improvements as part of the approval of development in the Specific Plan area.[146]

The LAUSD then began to either acquire options to purchase from property owners or to condemn and take by eminent domain all of the 11 acre property near Temple and Beaudry streets, culminating in an aggregate purchase price of $30 million.[147] Official approval of the acquisition process had been given by the LAUSD School Board on August 21, 1989.[148]

B. Environmental Site Investigation Of Middle School Temple And Beaudry Site Compared To The Same Process At The Belmont New Elementary #3 Site

1. Site Assessment/Due Diligence For The Belmont Middle School Site

As part of its site evaluation process, the LAUSD's EHS Branch engaged the services of ABB Environmental Services, Inc. ("ABB Environmental") to perform a Phase I and Phase II environmental site investigation for the 11 acre Temple-Beaudry site,[149] upon which the LAUSD planned to construct Belmont Junior High No.1.

In May of 1990, in carrying out its Phase I investigation of the 11 acre Temple-Beaudry site, ABB Environmental physically inspected the site and structures, conducted an investigation of historic uses of the property and searched the files of regulatory and other agencies.[150] ABB Environmental's conclusions and recommendations in the ABB Environmental Phase I were as follows:

---

[144] Temple Beaudry Agreement. [OMM002661-2734] *See* Exhibit 23.

[145] Memorandum of David Cartwright to File, dated September 22, 1995 [OMM0028264-28277] *See* Exhibit 97.

[146] *Id.*

[147] *Id.*

[148] School Board action dated August 21, 1989. [AI-01133] *See* Exhibit 6.

[149] The site consisted of Blocks 12, 13 and 14 of the Park Tract and was bounded by Temple street (north), Boylston Street (west), Colton Street (south) and Beaudry Avenue (east). The total site area was estimated at 11 acres. ABB Environmental Phase I [OMM0035026] *See* Exhibit 10.

[150] ABB Environmental Phase I [OMM0035026] *See* Exhibit 10.

- Location of the site was within the Los Angeles oilfield and documented oil extraction activities on the site indicate a potential for environmental problems associated with explosive/toxic gases and subsurface soils contamination. Such problems appear most likely to occur in Blocks 12 and 13 based on locations of abandoned oil wells and the boundaries of the oilfield. Although no related problems have been recorded at the subject site, nearby properties have experienced crude seepage, and significant methane problems are occurring in at least one geologically and historically similar area of Los Angeles. Improperly abandoned oil wells are a recognized hazard due to their potential to act as a conduit for gas migration. Existing records of such wells may or may not correctly define the location and numbers of abandoned wells. The site could also contain such oilfield-related features as waste oil/drilling fluid sumps, buried pipelines, or other debris.

- The two fuel tanks and one hydraulic lift cylinder at 1100 West Temple Street installed in the late 1940s could potentially have leaked, contaminating subsurface soil and groundwater.

- The paved surfaces of the hazardous waste/drum and paint storage areas at 1100 West Temple Street exhibit moderate to heavy staining. Solvents and/or paints could have contaminated underlying soils in this area. Waste volumes stored in these areas appear to be too small to cause a significant groundwater contamination problem. It was not possible to thoroughly evaluate the mechanic's pit in the main shop at 1100 West Temple Street due to debris piled inside.

- Despite its known previous residential use, the concreted area at the Holy Rosary Church is sufficiently out of character to the rest of the property to raise suspicion. Although unlikely, an underground tank or other significant subsurface item could exist here.

2. Site Assessment/Due Diligence For Belmont New Elementary #3 Site

At almost the same time, LAUSD's EHS Branch received a Report of Site Investigation for Belmont New Elementary School #3, also prepared by ABB Environmental for a site which is a few blocks from the Belmont site at issue in this *Report of Findings*. On August 27, 1990, Ms. Susie Wong, then-Director of the LAUSD's EHS Branch wrote the California Department of Health Services' Toxic Substances Control Division ("DHS"), the predecessor to today's California Department of Toxic Substances Control, to submit the ABB Environmental report for Belmont New Elementary #3 Site, and to inform DTSC about other LAUSD school sites and proposed acquisitions.[151] Ms. Wong sought DTSC's concurrence in the utilization of certain unique procedures by which to comply with California's hazardous waste and hazardous substance laws. On October 22, 1990, Ms. Wong wrote again to specifically inquire of DTSC about the DTSC's role in the "investigation and/or remediation of the Belmont New Elementary #3 Site." Rosanne McGlohon (now Rosanne Harding) of LAUSD's EHS Branch then spoke by telephone with DTSC officials on November 26, 1990, to set up a meeting to try to resolve these issues.

---

[151] No records have been produced to the Internal Auditor by which to confirm which sites or proposed acquisitions were the subject of this communication, which may have been the result of LAUSD's attempt to comply with the notification requirements of California Health & Safety Code §25442 regarding notifications to DTSC that are required concerning hazardous waste disposal on public land.

On December 7, 1990, the DTSC wrote Ms. Wong in response to the six month dialogue to inform her that the DTSC would continue to require its normal Preliminary Endangerment Assessment required under California Health & Safety Code §25442 regarding the notifications to DTSC required concerning hazardous waste disposal on public land, and not use any other procedure. As a result, DTSC concluded that certain modifications to the ABB Environmental analysis of the Belmont New Elementary #3 Site would be required.[152]

The Internal Auditor observes that LAUSD's EHS Branch was well aware by the end of 1990 of the existence and views of the state's DTSC with regard to environmental remediation issues on existing and prospective LAUSD school sites.

3. California Environmental Quality Act Compliance At Belmont

As part of LAUSD's review of the Belmont Middle School site, a Notice of Preparation ("NOP") of an Environmental Impact Report under the California Environmental Quality Act ("CEQA") was issued by the LAUSD. In response to the NOP, on April 20, 1990, the DOGGR submitted a letter that provided several health and safety warnings regarding the siting of a school within the administrative boundaries of the Los Angeles oil field.[153] As a result of this letter to LAUSD, a meeting was scheduled with representatives from DOGGR on May 7, 1990.[154]

At the May 8, 1990 meeting, the LAUSD met with DOGGR representatives to discuss the environmental issues posed by the Los Angeles oil field. Attending this meeting were David W. Cartwright, Carol Cogan, LAUSD Real Estate Agent, R.K. Baker of DOGGR, oil field operator Bruce Manley, and Bonnie Riddell, Mr. Manley's attorney. Mr. Cartwright later concluded that the gathered oil and gas experts "presented a bleak picture of the Temple/Beaudry site."[155] As a result of this meeting, Mr. Cartwright identified the following issues:[156]

---

[152] All of this information was obtained from the Letter from DTSC to Ms. Susie Wong dated December 7, 1990. *See* Exhibit 355. No copies of the referenced LAUSD's EHS letters were produced to the Internal Auditor by any party.

[153] Letter from R.E. Crobaley, DOGGR Environmental Supervisor to Robert J. Niccum, LAUSD Real Estate and Asset Management. [OMM0020090-92] *See* Exhibit 8.

[154] Letter from Carol A. Cogan, LAUSD Principal Realty Agent to David Cartwright. [OMM0000363-367] *See* Exhibit 9.

[155] Letter from David Cartwright to Richard Mason, dated May 9, 1990. [OMM0000354-357] *See* Exhibit 338.

[156] An attorney's role in the CEQA review process depends on the point in the approval process the attorney becomes involved and on the scope of legal work desired by the client. Attorneys may be responsible for:

- The old Los Angeles oil field runs through the site. There are 13 known wells and one currently producing well. DOGGR suspects that there may be dozens more unmarked abandoned wells dating back over 100 years.

- Alternative First/Beaudry has only one known abandoned well and is actually outside of the oil field. SP appears to have intentionally misrepresented the existing conditions on the First/Beaudry site.

- The shallowness of the oil field means that there is substantial likelihood of one or more of the following conditions arising:

- A large pressurized build-up of natural gas and/or oil could occur if the site is covered by structures and concrete. Seepage of oil is likely and the threat of a natural gas induced explosion is as likely here as in the Fairfax area.

- If the one producing well is shut down and abandoned, the likely result will be a re-pressurization of the oil field.

- Many bootleg wells (i.e., uncharted) exist on the site and may never be discovered even during grading. **Thus a dangerous condition will remain.**

- There are natural gas problems which will require venting and perhaps even flaring.

- DOGGR suspects that petroleum operations involving **hazardous materials** may have been conducted on the site many decades ago. **The likelihood of serious contamination is high.**

- The proximity of hydrocarbons made this area a heavy industrial site fifty years ago.[157]

---

1. Identifying significant CEQA issues affecting initial formulation of project or preparation of application.
2. Assisting clients in determining likely cost and proper method of achieving compliance with CEQA.
3. Overseeing all steps in the CEQA process and assuring all CEQA requirements are met.
4. Issuing opinions regarding CEQA compliance.
5. Advising clients regarding the propriety and validity of indemnity agreements between agencies and applicants.
6. Advising clients on related practical and ethical issues. *See*, Practice Under the Environmental Quality Act, by Stephen Kosta and Michael Zische (Continuing Education of the Bar, 1993), Sections 2.2, 2.3, 2.19, 2.22.

[157] Letter from David Cartwright to Richard Mason, dated May 9, 1990. [OMM0000354-357] (emphasis added). *See* Exhibit 338.

Mr. Cartwright further reported that Mr. Baker of the DOGGR had made the following observations:

- This [the Los Angeles oil field] is the most troublesome and problematic oil field in the entire county.
- The Temple/Beaudry site is not fit for any construction.
- DOGGR cannot imagine a worse site for a school.
- DOGGR insists that no structure should be built over a well.
- The maintenance of the existing producing well requires full access by tanker truck.
- In terms of the relative likelihood of the alternative sites not being impacted, Crown Hill is outside the field and First/Beaudry is on the outer edge of the field and thus in all likelihood not materially impacted. Only the Temple/Beaudry site is substantially at risk.

Mr. Cartwright further reported that as a result of this meeting there was "an apparent conclusion of all parties (including the District technical people) . . . that the school could not and should not be built at the Temple/Beaudry site."[158] He also noted that "[I]f the District prepares an EIR, Manley and DOGGR will make sure that the public record sets forth the dangerous conditions on the site."

On June 1, 1990, Dr. Bonnie James, then-Director of the Facilities Division, LAUSD, reported to the LAUSD School Board's Building Committee that DOGGR records indicated a possibility of up to 34 oil wells, which would need to be abandoned at a cost of $45,000-$100,000 each. Additionally, their presence indicated the "potential for related problems with explosive and/or toxic gases." Again, the DOGGR expressed serious concern about developing the area. Both the LAUSD's legal counsel and the health and safety branch had "serious concerns over constructing a school on this site. Counsel has indicated that he could not support this site without significant geological and engineering exploration to determine the potential unknown risks." Staff sought direction from the LAUSD School Board's Building Committee about whether to proceed with the site.[159]

A closed meeting of the LAUSD School Board was held on June 4, 1990 to discuss the oil and gas environmental issues raised at the Temple-Beaudry site.[160] The resulting direction from the LAUSD School Board was to ask the Building Committee and staff to work with DOGGR.

---

[158] *Id.*

[159] Inter-Office Correspondence, from Bonnie R. James to LAUSD School Board Building Committee, June 1, 1990. [OMM0020084-89] *See* Exhibit 11.

[160] Minutes of Closed Session of LAUSD Board of Education, dated June 4, 1990. [RM-00106-120] *See* Exhibit 249.

On June 12, 1990, in response to the concerns raised by DOGGR regarding the appropriate use of this site for a school, Mr. Daniel J. Niemann, Managing Director of S-P Company (Shimizu), commissioned a report by environmental consultants (LeRoy Crandall and Associates) to persuade the LAUSD School Board that the Temple-Beaudry site could be used for a school site.[161] The LeRoy Crandall report minimized the public health and safety issues raised by siting a school in an oil field as follows:

> At present, the 780 acre Los Angeles city [oil] field that underlies the site is not included in a designated City of Los Angeles Methane District. The oil field has coexisted with residential and commercial surface uses for more than 90 years without significant problems. . . . Any methane gas that might be released from the oil reservoir apparently dissipates into the atmosphere. Should methane gas be considered a potential future concern, installation of a methane barrier and venting system beneath buildings at the time of construction would completely resolve the problem.

The LeRoy Crandall report stated its conclusions as follows: "[I]n conclusion, the presence of oil wells is not a significantly unusual condition and is certainly not unique to the extent that it should result in project cancellation."

On June 14, 1990, the LAUSD Board's Building Committee conducted a meeting regarding the Temple-Beaudry site. Ms. Rosanne McGlohan from the LAUSD EHS Branch reported that it would cost approximately $300,000 to perform a Phase II site assessment and she estimated that the remediation costs could range from $2.6 million to $4.5 million for the site.[162] The LAUSD School Board's Building Committee requested that DOGGR provide a report to the LAUSD to list its recommended mitigation measures for the Temple-Beaudry site, and concluded that the project could go forward, but further environmental investigation could proceed only after receiving the report from DOGGR.[163] Mr. Baker of DOGGR promised a response within one month.

On July 10, 1990, Mr. Baker wrote to Roberta Weintraub in her capacity as the Chairperson of the LAUSD Building Committee.[164] DOGGR suspected that "shallow, biogenic, methane gas may be present in the school project area." DOGGR recommended "that all buildings be vented by placing a plastic sheet or 'Liquid Boot' between the foundation and the ground surface, digging cross trenches under the sheeting and filling them with gravel-packed PVC piping, and venting this system to the atmosphere."[165] The DOGGR further recommended that the LAUSD thoroughly investigate and remove any "old industrial or oil field sumps" which may contain wastes prior to construction.[166]

---

[161] Letter from Daniel J. Niemann to Roberta Weintraub, Chairperson to Building Committee, dated June 12, 1990. [OMM0000093], attaching Report of LeRoy Crandall and Associates to S-P Company, dated June 12, 1990. [OMM0000093-95] *See* Exhibit 12.

[162] Inter-Office Correspondence, from Bonnie R. James to William R. Anton, Deputy Superintendent, June 29, 1990. [OMM0020112-0020113] *See* Exhibit 13.

[163] *Id.*

[164] Letter from Richard Baker, District Deputy, DOGGR to Roberta Weintraub, Chairperson LAUSD Building Committee, dated July 10, 1990. [OMM002115-2117] *See* Exhibit 14.

[165] *Id.*

On August 6, 1990, the LAUSD Board adopted the report of the LAUSD School Board Building Committee to appoint ABB Environmental Services as the consultant that performed services to conduct the Phase II environmental investigation. On August 27, 1990, Dr. Bonnie James reported to the LAUSD School Board on the recommendations of DOGGR that if construction should occur, all buildings should contain a "Liquid Boot" methane barrier between the foundation and the ground surfaces, venting systems should be installed, and the operating well should be maintained and monitored to prevent repressurizing of the oil field.[167]

In November 1990, ABB Environmental (utilizing Geosciences Analytical, Inc., as a sub-contractor in the methane investigation) issued the results of its Phase II investigation. The investigation indicated the following:

- Several areas of the site appear to contain significant concentrations (above 1,000 mg/kg) of hydrocarbons in the soil gas. Although gas appears to be of primarily biogenic (as opposed to petrogenic) origin and generation rates are probably relatively low, its presence could represent a potential hazard to the fully developed site if appropriate mitigative measures are not implemented.

- Of the thirteen suspected abandoned wells, six were located by the investigation effort. These wells have clearly not been abandoned to current standards. No other features associated with the historical oil field operations on the site were discovered.

- Subsurface soils in numerous areas throughout the site contain what are believed to be naturally occurring petroleum hydrocarbons (*i.e.*, crude oils). This feature first appears at approximately ten feet below ground surface in some areas, and extends to at least 100 feet below ground surface. In addition to the potential environmental and human health risks, the material has a potential impact on facility foundation and grading operations.

- Subsurface soils do not appear to have been affected by underground fuel storage tanks or other operations at the auto service center.

- Groundwater does not appear to be contaminated by volatile organic compounds (e.g., gasoline, solvents), but is generally degraded by naturally occurring crude oil.

As a result of these findings ABB Environmental recommended that the LAUSD undertake Phase III (remedial) measures investigation for the following:[168]

---

[166] *Id.*

[167] Memorandum from Dr. Bonnie James to William Anton re: Summary of Augmented Committee Meeting. [OMM0020118-120] *See* Exhibit 16.

[168] *Id.*

- Systems designed to protect against and abate hydrocarbon gas and crude oil seepage should be incorporated into the facility design.

- All abandoned oil wells should be reabandoned according to current standards as promulgated by the California Department of Conservation, Division of Oil and Gas and the City of Los Angeles.

- The underground storage tanks and hydraulic lift at the auto service station should be removed according to City of Los Angeles City Fire Department regulations.[169]

- The potential impact of crude oil in subsurface soils should be evaluated by the pre-design geophysical investigation. Quantities of this material which could be excavated during site grading operations should be properly handled and disposed of.

- Qualified onsite observers should be present during site grading activities due to the potential for uncovering presently unknown oilfield-related features (*e.g.*, abandoned wells, sumps).

- The geophysical and test pitting investigations should be completed following demolition of existing structures.

4. Certification Of Environmental Impact Report For The Temple And Beaudry Middle School Site

On November 19, 1990, the LAUSD School Board certified that the Final Environmental Impact Report ("FEIR") for Belmont New Junior High School #1 was completed in compliance with the California Environmental Quality Act.[170] The FEIR identified three alternative sites for locating the new school: the 15 acre Crown Hill Site (bounded by Lucas Avenue, Emerald Drive, Huntley Drive, Miramar Street, Bixel Street, and Third Street); the First/Beaudry Site (bounded by Colton Street, Beaudry Avenue, First Street and Bixel Street) and the preferred Temple/Beaudry Site (bounded by Temple, Beaudry, Colton and Boylston Streets). The FEIR for Belmont New Junior High School #1 identified the environmental conditions related to the Los Angeles Oil Field location as follows:

> The placement of a school on an old oil field introduces the probable need for reabandonment of improperly capped wells and the possibility of gas migration. Additional technical studies need to be undertaken to identify the extent of remediation necessary due to the presence of these old oil wells.

---

[169] In 1983, California became one of the first states to regulate the construction, permitting and monitoring of underground storage tanks containing hazardous substances by adopting provisions entitled Underground Storage of Hazardous Substances in the Health and Safety Code. Health & Safety Code §§25280-25299.81; 23 CCR §2640 (as amended in 1994).

[170] Final Environmental Impact Report, Belmont Jr. High School, September, 1990. [IA-01773-1985] *See* Exhibit 18.

> The preferred school site currently contains an active oil well on the property. Maintenance of this well would allow continued pressure monitoring of the oil zone and reduce the risk of hazard that could occur from increased pressurization of the oil field. The California Department of Conservation, Division of Oil and Gas, has recommended that the active well continue to operate. The LAUSD needs to determine if it will keep the well operating or if alternative approaches exist to monitor pressure in the oil field and to minimize hazards associated with increased repressurization of the oil field.[171]

The FEIR also found the need for additional environmental study of the Temple/Beaudry site:

> The preferred site contains 13 known abandoned oil wells and an active well. Activities associated with historical extraction of crude oil may have contaminated surface or subsurface soils. These activities plus naturally occurring processes are a potential source of hydrocarbon gases which can rise through surface soils and present exposure or explosion hazards. In addition, closure of the active oil well on the preferred site could lead to additional risks from underground methane. Additional technical studies are recommended to identify necessary mitigation measures for these conditions.
>
> The number of abandoned oil wells on the First/Beaudry Site is not known at this point,[172] although the site is shown as outside the Los Angeles Oil field boundaries. Additional study regarding the presence of wells on the First/Beaudry Site also would be necessary should this site be selected.[173]

5. Search For A New Belmont High School Site

During this period of time the LAUSD was simultaneously searching for a site for a senior high school within the Belmont attendance area. In October 1990, the LAUSD prepared an Environmental Impact Report to "analyze the likely potential adverse environmental consequences associated with the acquisition and development of a senior high school at three alternative sites."[174] This site assessment EIR studied three possible sites near the vicinity of downtown Los Angeles, including the Franciscan Property, Main Street Dairy, and the Southern Pacific Railroad Freight Yards.[175] Each of the studied sites had previously been used for industrial purposes that resulted in serious environmental contamination issues (*e.g.*, the Franciscan Property had extensive lead contamination), or had problems of accessibility.

---

[171] *Id.*, at p. 2 [IA-01979]

[172] The First/Beaudry Site is the same site as the 24 acre Shimizu site ultimately acquired by the LAUSD, less several acres on the northwest portion of the property that was acquired by Shimizu between 1990 and 1993.

[173] *Id.*, at p. 112 [IA-01895]

[174] Final Environmental Impact Report, Belmont New Senior High School Alternative Site Assessment, October 1990. [OMM0000787-1129] *See* Exhibit 21.

[175] *Id.*, at 7 [OMM0000807]

On July 15, 1991, Richard Walton of the Office of Local Assistance ("OLA") approved the Environmental Impact Report for the Temple and Beaudry site.[176] However, site selection for Belmont New Senior High School continued from November 1990 to July 1992, including the consideration of the alternative sites identified during the site assessment EIR. During the period of 1990 to 1992, the LAUSD continued with the planning of construction of the Belmont New Junior High School on the 11 acre Temple and Beaudry site. However, as LAUSD began to lobby the State Allocation Board ("SAB") and the California Department of Education, state officials raised concerns about the environmental conditions of the 11 acre Temple and Beaudry site. The property was dubbed by the SAB's staff as the "Exxon Valdez" property.[177]

On July 15, 1992, the LAUSD's Business Services Division, Facilities Planning and Real Estate Branch jointly prepared a report entitled, "Analysis of the Preferred Site and Alternative Options For Belmont New Middle School No. 1."[178] This report identified the preferred site as located at the Temple-Beaudry site.[179] The report summarized the environmental assessment of site as follows:[180]

> During 1991, Belmont Middle School preferred site was environmentally assessed in accordance with the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) guidance document. This document specifies the manner in which a site must be examined in order to determine the extent of contamination on a property.
>
> In order to comply with this document and ensure that the site was thoroughly characterized, the District's Environmental Health and Safety Branch (EHSB) contracted with ABB Environmental Services for a complete environmental assessment. Their subcontractor, Geosciences Analytical, has evaluated oil fields throughout the state for the Division of Oil & Gas (DOGGR) and is considered to be a methane gas expert.
>
> When the first phase of the assessment revealed that the site was on top of an oil field and that an auto body shop was present, a Phase II assessment was recommended. The Phase II Assessment included soil sampling, groundwater sampling, and a soil gas survey. The Phase II report concluded that a number of items require remediation.

The EHSB staff stated that the following items (with the identified remediation methods in parenthesis) would be addressed in its remediation plan: (1) abandoned wells (reabandon),

---

[176] Letter from Richard Walton to Dr. Bonnie James Approved the EIR. [IA-14616] *See* Exhibit 28.

[177] Interview with Dominic Shambra, dated August 9, 1999.

[178] LAUSD issues analysis of the preferred site and alternative options for Belmont New Middle School. [IA-04632-41] *See* Exhibit 29.

[179] *Id.*, at IA-04634.

[180] *Id.*, at IA-04641.

(2) active well (retain), (3) methane gas (venting, passive gas collection, vapor barrier, detection system, building placement off of oil wells), (4) underground tanks (removal), and (4) hydraulic hoist (removal).[181] The agencies that were identified by EHSB staff include DOGGR, Los Angeles City Fire Department and the Office of the State Architect.[182]

On August 26, 1992, the SAB staff report listed the possible 33 oil wells, the potential for explosive and/or toxic gases and toxic subsurface substances on the LAUSD's "preferred" 11-acre site as a major reason for not providing state funding for the site.[183] The LAUSD proposed a site mitigation and monitoring plan, according to the report. The OLA recommended against approval of the site, calling it "highly questionable, if not inappropriate" for a school and "an example of the need for districts to involve the OLA," as it believed a better site might be available. Development will be "extremely expensive," even without regard to the toxic issue. The SAB required the district to clean the site prior to disbursement of any state funds.

On November 18, 1992, the LAUSD petitioned the SAB to amend a prior action concerning the apportionment of funds for a site which was believed to have a toxic/hazard condition.[184] SAB concluded that the site "does not qualify as toxic or hazardous, but rather the conditions are due to a naturally occurring substance."[185] This legal conclusion was reached following the analysis prepared by SAB on the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C.A., 9901 *et seq.*, Sec. 101, which defined "hazardous substance" to exclude "petroleum, including crude oil or any fraction thereof." The SAB staff comment stated that "[s]ites in various geographical portions of the State exhibit characteristics common to the region. The Los Angeles basin is widely known as being a large repository for crude oil and similar substances, e.g., the La Brea Tar Pits."[186] The SAB adopted its staff's recommendation to "[g]rant the District's request for a funding mechanism which would allow for remediation and sanctioning of the site as suitable for school purposes immediately prior to the State Allocation Board taking title."[187]

Acquisition of the 11 acre parcel was not actually completed until 1993 and 1994. The Real Estate Branch, working with Mr. James Colbert, outside counsel at O'Melveny & Myers, acquired the property through a combination of condemnation actions and through the use of a purchase-option agreement commonly used by the LAUSD's Real Estate Branch.

LAUSD could use eminent domain to acquire property necessary to carry out the powers or functions of the district.[188] The power of eminent domain could be exercised if:

---

[181] *Id.*

[182] *Id.*

[183] Report of Executive Officer, State Allocation Board Meeting, August 26, 1992. [IA-14898-900] *See* Exhibit 345.

[184] Report of Executive Officer, State Allocation Board Meeting, November 18, 1992. [IA-14262-14263] *See* Exhibit 31.

[185] *Id.*

[186] *Id.*

[187] *Id.*

[188] Ed. Code §35270.5.

(a) The public interest and necessity required the project.

(b) The project was planned or located in the manner that would be most compatible with the greatest public good and the least private injury.

(c) The property sought was necessary for the project,[189] and the public entity adopted a resolution of necessity.[190]

The owner of property acquired by eminent domain is entitled to compensation. In any case where two or more statutes provide compensation for the same loss, the person entitled to compensation may be paid only once for that loss.[191] The measure of this compensation is the fair market value of the property taken.[192] The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular necessity to do so, and a buyer, being willing to buy but under no particular necessity, each dealing with full knowledge of the uses and purposes for which the property is adaptable and available. The fair market value of property taken for which there is no relevant, comparable market is its value on the date of valuation as determined by any method of valuation that is just and equitable.[193] A just and equitable method of determining the value of nonprofit, special use property for which there is no relevant, comparable market is set forth in §824 of the Evidence Code.[194]

The presence of any hazardous material within a property shall not be considered in appraising the property, for purposes of CCP §1263.720 (added 1995) or pursuant to CCP §1263.310. However, remediation costs do weigh into the final reasonable price offered.[195]

---

[189] Code of Civil Procedure §1240.030 ("CCP").
[190] CCP §1240.040.
[191] CCP §1263.010.
[192] CCP §1263.310.
[193] CCP §1263.320.
[194] CCP §1263.321.
[195] CCP §§1263.710 (added 1995), 1263.720.

CHAPTER 8

THE 24 ACRE SHIMIZU SITE NEAR FIRST AND BEAUDRY AVENUE

By 1993, there was a downturn in the general Los Angeles real estate market. At this time Shimizu had assembled ownership of a 24 acre site near First and Beaudry Avenue which purportedly had a cumulative appraised value of $128 million at some point in the early 1990s.[196] According to interviews with David Cartwright, the Shimizu property ("24 acre site") was originally identified in a site selection EIR for the 1988-89 Belmont junior high school site. In 1989, Shimizu had not yet acquired several acres located in the northwest portion of the 24 acre tract which were subsequently acquired prior to 1993. In late Spring 1993, Mr. Cartwright spoke with Shimizu's outside counsel, Timi Hallem of Tuttle and Taylor, who inquired whether LAUSD was still interested in the Shimizu property. Mr. Cartwright relayed this inquiry to LAUSD. The initial reaction from LAUSD was that the District was not interested in the property. A month later (approximately June 1993), someone from LAUSD (no one can pinpoint who) called to express LAUSD's interest in acquiring the property.[197] Communication with Shimizu was not formalized, because Shimizu and LAUSD were afraid of publicity. Face-to-face meetings were held at the Checkers Hotel in downtown Los Angeles. Attendees at these meetings for LAUSD included LAUSD General Counsel Richard Mason, Mr. Shambra, and Mr. Cartwright.

A. The Role Of David Cartwright And The O'Melveny Law Firm

Mr. Cartwright had previously worked with Mr. Shambra on the potential "Cornfield" High School site scooping process and the Grand Avenue parking garage joint venture project. While Mr. Cartwright characterized Mr. Shambra's role as one of a high level reporting relationship to the superintendent, "it was not a clear reporting relationship."[198] Shambra was brought in to assess and use under-utilized assets within the LAUSD. In the 1990s LAUSD was facing severe fiscal constraints. Apparently Mr. Shambra was brought, first by Superintendent Anton and then continued in the role by Superintendent Thompson, in to "think creatively" about financing school acquisition and development projects.[199]

Mr. Cartwright stated that his role as legal counsel on the Shimizu transaction was limited in nature and scope, and did not involve legal advice on environmental matters, compliance with the California Education Code, or even the full extent of a traditional real estate transaction.[200] Mr. Cartwright stated that while he worked for LAUSD, he reported to Mr. Mason.[201] Mr. Cartwright states that Mr. Mason's role at LAUSD evolved over time from special counsel to general counsel for the LAUSD.[202] Mr. Cartwright viewed Mr. Mason as a colleague in negotiations (although Mr. Mason did not regularly attend all negotiation meetings). According to Mr. Cartwright, Mr. Mason articulated LAUSD policy on key issues and had decision-making authority. According to Mr. Cartwright, Mr. Mason controlled who Mr. Cartwright had working on the file, based on budgetary concerns. Mr. Cartwright stated that he asked Mr. Mason for additional attorneys from the O'Melveny firm with environmental legal expertise and was turned down on multiple occasions by Mr. Mason. According to Mr. Cartwright, Mr. Mason told Mr. Cartwright that LAUSD personnel principally were to be used on Belmont project, because there was a limited LAUSD legal budget.[203] No LAUSD personnel confirmed Mr. Cartwright's statements as to his limited role or as to the limits purportedly placed upon his use of other legal counsel, including environmental counsel by Mr. Mason.[204] Rather, LAUSD personnel interviewed by the Internal Auditor indicate that, in their view, Mr. Cartwright was the lead attorney on the Shimizu transaction from the summer of 1993 through the closing of the transaction on March 31, 1994.

---

[196] Memorandum of David Cartwright to File re "Belmont New Senior High School Project -- Early History through March 1994", September 22, 1995. [OMM0028264-277] *See* Exhibit 97.

[197] Mr. Cartwright could not recall the identity of the person from LAUSD who called him. The Internal Auditor received a statement from Mr. Dominic Shambra that he was instrumental in communicating LAUSD's interest in the Shimizu property.

[198] Interview with David Cartwright, dated July 29, 1999.

[199] Interview with David Cartwright, dated July 29, 1999 and August 12, 1999; and Richard Mason, dated June 28, 1999.

---

[200] However, in stark contrast to his comments to the Internal Auditor's team, Mr. Cartwright wrote to Mr. Mason on May 27, 1994, commenting that "O'Melveny's status in the private commercial community gives the District more negotiating power than it otherwise would have. I am probably the only attorney in the county with a combined Education Code and private real estate practice ... Last July when you received the go ahead from the Board to pursue the deal, we were immediately confronted with the complications imposed by CEQA. Despite some differences of opinion, I gave the correct (albeit aggressive) advice to follow the rather newly authorized CEQA format called the mitigated negative declaration, rather than the District's traditional full EIR format. In retrospect, had the District not followed my advice, the deal would never have closed because, as we now know, Shimizu would not have closed after March 31, 1994. *See* Exhibit 294, p. 3.

[201] There is apparently no engagement letter from the O'Melveny & Myers firm to LAUSD regarding any Belmont-related legal services.

[202] Interviews with David Cartwright, dated July 29, 1999.

[203] In an interview with Mr. Cartwright, he pointed to the following correspondence to support his view that Mr. Mason limited his use of other attorneys within the O'Meveny firm: Letter from Richard Mason to David Cartwright, dated August 20, 1996. [IA-22775] *See* Exhibit 256.

[204] The attorneys from Gibson, Dunn & Crutcher LLP representing Mr. Cartwright and the O'Melveny law firm before the Internal Auditor have suggested that Mr. Barry Groveman was the LAUSD outside environmental counsel during the entire Belmont development period, citing an October 23, 1989 internal LAUSD document that on its face refers to a quote from Mr. Koch that "We've hired Barry Grossman (sic) for environmental law." *See* Exhibit 356. However, the facial context of this internal LAUSD memorandum is to certain eminent domain litigation for which O'Melveny has been hired, but for which environmental counsel is also needed. On July 11, 1991, in a letter from Mr. Mason to Mr. Colbert of O'Melveny, Mr. Mason gives permission to Mr. Colbert to retain Mr. Groveman "as associate counsel in the condemnation proceedings" involving Los Angeles NES #3. *See* Exhibit 357. On July 15, 1991, Mr. Groveman writes Mr. Mason to confirm the assignment and to state his specific role in the matter for a specific eminent domain action. *See* Exhibit 358. Mr. Groveman states flatly that he was never involved as outside legal counsel on Belmont until November, 1998. Mr. Mason concurs in Mr. Groveman's statement. Interview with Richard Mason, dated June 28, 1999.

Indeed, Mr. Mason provided a statement in direct contradiction to the statement made by Mr. Cartwright regarding limitations on Mr. Cartwright's use of other legal counsel from within or without O'Melveny.[205] Mr. Mason stated that he never limited Mr. Cartwright's use of environmental attorneys within the O'Melveny firm.[206] Mr. Mason disagreed with Mr. Cartwright's views regarding the level of his supervision of Mr. Cartwright and flatly denies that Mr. Cartwright ever requested or was ever denied additional environmental legal expertise.[207]

There appears to the Internal Auditor that there is no persuasive documentary evidence to resolve the primary elements in this dispute, but finds the weight of the testimony to affirm Mr. Mason's views on the matter.[208]

Up to the Summer of 1993, Mr. Cartwright was not involved in any Phase II site assessments for the LAUSD. Mr. Cartwright characterized his role as the real estate legal advisor brought in to ensure that the State would fund the acquisition. Several oral discussions were conducted regarding the acquisition documentation. An initial study under CEQA was conducted by the LAUSD REAMB and EHSB in the Summer of 1993.

B. The Shimizu Deal

The Shimizu or 24 acre site acquisition became public in September 1993.[209] The following steps were taken during the course of the acquisition. First, Mr. Robert Niccum, Director of

---

[205] Interview with Richard Mason, dated June 28, 1999.

[206] Interview with Richard Mason, dated June 28, 1999.

[207] Interview with Richard Mason; Letter from Richard Mason to Bryan Steele, Joint Legislative Audit Committee, dated February 12, 1999 ("Mr. Cartwright worked directly under Dominic Shambra's immediate supervision . . . and indirectly under the supervision of Richard K. Mason.") [IA-92142-158] *See* Exhibit 245.

[208] Mr. Cartwright provided a letter dated August 6, 1991, regarding O'Melveny's work on an "Asset Management Program" that does not mention any aspect of Belmont *per se*, and a second letter from Richard Mason to David Cartwright, dated August 20, 1996,.([IA-22775] *see* Exhibit 256), that appears on its face unrelated to this issue. The absence of any engagement letter or specific recitation as to the extent of O'Melveny's engagement in this matter, the Internal Auditor observes, would likely contribute in any dispute to a resolution against Mr. Cartwright's views as the outside lawyer and in favor of Mr. Mason as the client representative. *See* Government Code §6148, especially paragraph (a)(2) and (c)(2); *Severson & Werson v. Bolinger*, 235 Cal.App.3d (1991); and "Drafting Airtight Fee Agreements," Richard A. Zitrin, 12 California Lawyer 67 (October 1992).

[209] The Internal Auditor received inconsistent statements from Mr. Cartwright and Mr. Shambra regarding the need to maintain confidentiality on the initial purchase negotiations. Mr. Shambra has stated that the LAUSD School Board was informed early in the Spring of 1993. However,

REAMB, had an appraisal for the site prepared. Second, LAUSD needed to obtain the transfer of $30 million from the previous allocation by the State Department of Education's State Allocation Board ("SAB") for the condemnation of the Trump Ambassador site to the new acquisition of the Shimizu 24 acre site. Mr. Shambra was tasked by Superintendent Thompson with obtaining approval from the SAB for this transfer of funds. Mr. Cartwright described his role as an advisor to Mr. Shambra to deal with the funding timing issues. Richard Mason stated that he had a limited role in dealing with the SAB. Clearance by the State Department of Education is required before the State Allocation Board will "sign off." Mr. Cartwright stated that LAUSD's EHS and Real Estate Branches were responsible for putting together the information in order to obtain the Department of Education's approval of the "down dated" [*i.e.*, updated] environmental investigation.

The principal drafter of the Shimizu purchase agreement was Timi Hallem of Tuttle & Taylor. LAUSD through Mr. Cartwright provided comments and suggested changes to the document during the course of the negotiations. Mr. Cartwright could not identify the lead person for purposes of accumulating and articulating the LAUSD's comments to the purchase agreement. Mr. Cartwright stated that he handled all confidential documents during the negotiations with Ms. Hallem, and he was assisted in the matter by O'Melveny & Myers associates Mark Robertson and Lisa Gooden.[210]

The purchase price was determined by using outside consultant Bill Puget of Cushman, who was brought in to determine the fair market value of the property and to determine a fair price. Mr. Shambra described the acquisition effort as a "team approach." Mr. Cartwright described involvement by personnel from LAUSD's Real Estate Branch as well as the EHS Branch -- "a lot of people had things in the hopper."

C. The CEQA Mitigated Negative Declaration

As a result of the initial CEQA study, a mitigated negative declaration was selected as the appropriate CEQA document. In a July 22, 1993 letter from Robert Niccum to Richard Mason the two discussed the mitigated negative declaration concept.[211] Mr. Cartwright advised use of the prior CEQA work completed as part of the Shimizu Pacific Basin Center planned development (which had at that point been abandoned). There was a view that the CEQA process could be shortened if the players could agree to the mitigation measures beforehand. Mr. Cartwright and the LAUSD decision-makers believed that by using previous CEQA environmental and technical work (*e.g.*, traffic impact studies), LAUSD could shorten the time for completing the CEQA process, not curtail the scope of the CEQA review. The usual time-frame necessary to complete CEQA was 1 and 1/2 years.

Mr. Cartwright has stated that the LAUSD School Board was not informed until later in the process.

[210] Interview with David Cartwright, dated July 26, 1999.

[211] Letter from Robert Niccum to Richard Mason, dated July 22, 1993. [OMM0026368-26370] *See* Exhibit 351.

Mr. Cartwright stated that the idea of preparing a mitigated negative declaration for the acquisition of the Shimizu property was developed in a meeting in July or August 1993. A draft mitigated negative declaration was prepared in September 1993. In a memorandum dated October 26, 1993 from Mr. Cartwright to Robert Niccum,[212] which contains Mr. Cartwright's response to comments on the mitigated negative declaration, Mr. Cartwright stated that he "injected" himself into the LAUSD CEQA process. Notwithstanding his more general statements to the Internal Auditor, Mr. Cartwright confirmed that he was at this point the lead outside attorney for LAUSD on this project. Mr. Cartwright stated that he injected himself because he was concerned about the Trump Wilshire Group opposing the selection of the Belmont site. The Trump Wilshire Group was opposed to the selection of the Shimizu site because they feared that LAUSD would abandon the condemnation of the Ambassador hotel site.

D. The Shimizu Purchase And Sale Agreement

The "Purchase and Sale Agreement" was executed on December 17, 1993.[213] The LAUSD agreed to purchase the property "as is" and without warranty for environmental conditions. In section nine of the Purchase and Sale Agreement, LAUSD agreed to the following:

> Buyer acknowledges that (i) it has made an independent investigation of the continuing validity of any existing governmental approvals, and of any additional approvals which may be required with respect to the Property . . . (ii) prior to the Closing Date, [ultimately March 15, 1994], Buyer shall have completed sufficient physical and other examinations, investigations and inspections relating to the acquisition of the Property hereunder as will enable Buyer to determine that Buyer will acquire the same solely on the basis of such examinations, investigations and inspections, and further that Buyer shall accept the Property in its condition existing as of the Close of Escrow . . . and (iii) **Buyer acknowledges that it has been informed of the environmental issues set forth on Exhibit E hereto, including without limitation, the fact that there are oil wells on a portion of the Property and that a portion of the Property was previously used as a gas station.** (emphasis added.)

Exhibit E of the Purchase Agreement sets forth disclosures of the following environmental conditions: (1) There are four operating oil wells located on the Property; (2) A portion of the Property was previously used for a gas station; and (3) There may be underground tanks located on the Property. Attached to Exhibit E is a copy of the "Subsurface Soil Investigation for the Pacific Rim Plaza Property in Los Angeles, California, dated January 9, 1989, prepared by McLaren Environmental Engineering.

Mr. Cartwright's view of the "As Is" clause is that the sale price of $30 million created an opportunity to obtain land that was less impacted than the 11 acre site (because it was presumably outside of the Los Angeles oilfield boundary), and LAUSD was obtaining the property for less than the appraised value. Mr. Mason has echoed the same sentiment regarding the decision to obtain the property "As Is." Mr. Cartwright also stated that if LAUSD were to condemn the property, it would be acquired in an "as is" condition.[214] Therefore, Mr. Cartwright concluded that the LAUSD was not harmed by assuming known or suspected environmental conditions.

---

[212] [OMM-001415-17. *See* Exhibit 47.

[213] Purchase and Sale Agreement for Shimizu property, dated December 17, 1993. [OMM0027792-855] *See* Exhibit 65.

Mr. Shambra was the primary lead person in dealing with the state regarding funding of the acquisition of the 24 acre site. Mr. Cartwright thought that during this period the LAUSD School Board was primarily focused on the replacement housing issue, because Shimizu had purchased and razed affordable housing in the neighborhood as part of its effort to consolidate its land holdings. The prior 11 acre site acquisition plan had been agreed to by LAUSD in exchange for the replacement housing agreement.

On September 22, 1993, the SAB approved LAUSD's request to transfer $30 million from the Ambassador Project to the purchase of the 24 acre Shimizu site for Belmont Senior High School Project. The SAB qualified its approval by requiring that LAUSD was responsible for obtaining the following: assure the project had appropriate eligibility, an appraisal, and an environmental (EIR) review.[215]

On January 18, 1994, Henry Heydt, Assistant Director of the California Department of Education's School Facilities Planning Division and Betty Hanson, Consultant for the same office, wrote the LAUSD School Board to inform them that the California Department of Education approved the acquisition of the Shimizu 24-arce site for school purposes.[216] The letter emphatically stated that "[a]pproval is contingent upon the Phase II environmental assessment results that would insure the health and safety of the students and would be consistent with the cost standards of Office of Local Assistance."[217] The letter went on to admonish LAUSD of "the local governing board's responsibilities under Education code Section 39002 and Public Resources Code Sections 21151.2."

---

[214] The Internal Auditor observes that Mr. Cartwright's comments on condemnation do not square with the practice that environmental remediation costs are deducted from the fair market valuation of property (assuming no contamination) in eminent domain proceedings as the practice was explained by his O'Melveny partner, Mr. James Colbert, in regard to the enactment of AB 1024 in 1991. *See* California Code of Civil Procedure §1263.710 *et seq.* and the discussion of AB 1024 in Chapter 1 *supra*. *See also* the Stipulated Interlocutory Judgment entered on August 31, 1994, in *LAUSD v. Lucky Land, Ltd.*, [OMM0020004-0020013] (*see* Exhibit 359) wherein $1,969,220 is held back for environmental remediation from the fair market value of $6,020,000 on one of the largest parcels that now make up the 11 acre portion of Belmont. Mr. Colbert is attorney of record on this Stipulated Judgment.

[215] Inter-Office Correspondence, from Richard Mason to LAUSD School Board and Superintendent Sidney Thompson, dated September 24, 1993. [OMM0001554-1557] *See* Exhibit 327.

[216] Letter from Henry Heydt, School Facilities Planning Division and Betty Hanson, Consultant to LAUSD School Board, dated January 18, 1994. [IA-00109] *See* Exhibit 67.

[217] *Id.*

E. The Disputed Phase II Report

Seven days prior to the action of the California Department of Education, on January 11, 1994, Mike Scinto, who was at the time head of LAUSD's Facilities Planning and Analysis Branch, sent a memorandum to Susie Wong, director of LAUSD's Environmental Health & Safety Branch, requesting Ms. Wong to solicit proposals for a Phase II environmental assessment for the Shimizu 24 acre site.[218]

On February 15, 1994, in response to Mr. Scinto's January 11, 1994 request, Ms. Wong prepared a request for proposal in order to select "a qualified firm to provide Phase II environmental assessment services for Belmont New Senior High School #1 [*i.e.*, the Shimizu 24 acre site]."[219]

On February 17, 1994, Richard K. Mason, then Special Counsel to the LAUSD School Board, informed the LAUSD School Board that the SAB was expected to take up the issue of "allocation of funds to acquire the Shimizu property."[220] In this memorandum, Mr. Mason describes the State Allocation Board's September 23, 1993 action that "authorized acquisition of the Shimizu site on the conditions that the District abandon the Ambassador site, **comply with environmental reviews,** and establish other technical requirements."[221] Mr. Mason then stated "[w]e have met **all** conditions."[222] This statement that all conditions had been met was repeated in a letter from Mr. Mason to Gary Ness on February 19, 1994.[223]

Yet later in February 1994, the SAB communicated to LAUSD that LAUSD still needed to complete a Phase II site assessment of the 24 acre parcel.[224] LAUSD then had to mobilize quickly to meet the SAB process. Mr. Cartwright stated that he was surprised that the Phase II site assessment had not been completed.[225] A meeting was held by LAUSD personnel to address the need to complete the Phase II site assessment. Mr. Cartwright identified the following

---

[218] Inter-Office Correspondence, from Mike Scinto, Facilities Planning and Analysis Branch to Susie Wong, Environmental Health & Safety Branch, dated January 11, 1994. [BEL-00042] *See* Exhibit 66.

[219] Request for Proposal ("RFP") Prepared by Susie Wong, Director of Environmental Health and Safety Branch, dated February 15, 1994. [IA-00110-115]. The RFP was copied to David Koch, Doug Brown, Lynn Roberts, Robert Niccum, Michael Scinto and Dottie Lifford. *See* Exhibit 70.

[220] Inter-Office Correspondence, from Richard Mason to LAUSD School Board and Superintendent Sidney Thompson, dated February 17, 1994. [OMM0001906-1907] *See* Exhibit 291.

[221] *Id.*

[222] *Id.* (Emphasis added.)

[223] Letter from Richard K. Mason to Gary Ness, dated February 18, 1994. [IA-37138-145] *See* Exhibit 71.

[224] At some prior point it was discovered by Mr. Shambra and Mr. Cartwright that the Phase II environmental study for the Shimizu site had not actually been completed. Mr. Shambra provided a statement that he was not aware of this fact until December 1993

[225] Interview with David Cartwright, dated July 29, 1999.

LAUSD personnel in attendance at this meeting: Mr. Mason, Mr. Koch, Mr. Niccum, and Mr. Shambra. According to Mr. Koch, during this meeting, LAUSD's Environmental Health and Safety Branch was told not to assist in the acquisition of the Shimizu site.[226] Mr. Cartwright does not recall who told EHSB not to help with the acquisition, but Mr. Cartwright was surprised that EHSB was excluded -- "it did not pass the smell test." Mr. Cartwright attributed the dispute to a lot of bureaucratic in-fighting.[227]

In response and to bypass the perceived delays of using EHS, either Mr. Shambra and Mr. Cartwright arranged for Shimizu, the seller of the property, to conduct the Phase II study.[228] Shimizu contracted with ENV America to conduct a "down-dated" Phase II on the Shimizu 24 acre site.[229] The intent was to rely upon the previous two Phase II study completed by Shimizu in 1988 and 1989 as part of a now abandoned development project, "Pacific Basin." Mr. Cartwright communicated LAUSD's request that the seller conduct the Phase II study to Shimizu's counsel Timi Hallem.[230]

The principal issues concerning the 24 acre site were thought to be the oil and gas issues concerning the 4 operating wells in the northwest part of the parcel. Mr. Cartwright stated that his understanding of the oil and gas issues stemmed from his understanding of the old Los Angeles oilfield and the boundaries of it were based on wildcat drilling efforts (*i.e.*, the boundaries were not clearly defined). Nonetheless, according to Mr. Cartwright, Mr. Mason and Ms. Gooden, the 24 acre site was seen as having less environmental concerns because it was located outside the "boundaries" of the Los Angeles oilfield, as depicted on a map created by the DOGGR.[231]

The 1989 McLaren Report provided the baseline of information on the environmental characterization of the Shimizu 24 acre parcel. According to Mr. Cartwright, this report was used to meet the concerns of the SAB. This 1989 McLaren Report was updated by ENV America taking soil boring samples to confirm the results of the previous investigations.[232] The Department of Education was especially interested in the methane and oil field issues.

---

[226] Interview with David Koch, dated July 16, 1999.0

[227] Interviews with David Cartwright, dated July 29, 1999 and August 12, 1999.

[228] Though neither Mr. Shambra nor Mr. Cartwright could remember in their interviews with the Internal Auditor's team who had requested that Shimizu do the Phase II, Mr. Cartwright wrote Mr. Mason May 27, 1994, and stated that "When SAB staff hinted at a possible requirement of a Phase II environmental study, I got Shimizu to obtain and pay for it ($75,000, even though the District customarily obtains and pays." Exhibit 294, p.2.

[229] Interview with David Cartwright, dated July 29, 1999. Mr. Cartwright explained his use of the term "down-dated" to mean to update the prior environmental reports.

[230] Interview with David Cartwright, dated July 29, 1999; and Dominic Shambra, dated August 9, 1999.

[231] *See* Interviews with Richard Mason, dated June 28, 1999; David Cartwright, dated July 29, 1999; and Lisa Gooden, dated June 10, 1999.

[232] Interviews of David Cartwright, dated July 29, 1999 and August 12, 1999 (ENV America "down dated" the 1989 McLaren Report as described by Mr. Cartwright).

Mr. Mason in a memorandum prepared February 3, 1999, stated that "in order for the District to receive state funding for the $30 million [Shimizu 24 acre] property, a Phase II environmental assessment was required."[233] Mr. Mason explains the commissioning of the Phase II study as follows:[234]

> It is my understand [sic] that, with a deadline looming, then-Director of the Office of Planning and Development, Dominic Shambra, inquired how long it would take for the District to complete a Phase II environmental assessment of the Shimizu property. Told by the District that a Phase II analysis would take several months, Mr. Shambra asked Shimizu, the seller of the property, to commission an outside environmental consultant to perform the work. The consulting firm, ENV America completed a Phase II report and the District secured $30 million in State Allocation Board funding before closing escrow on the property in March 1994.

ENV America conducted field activities on February 19, 1994, and analysis of this data was performed between February 19 and February 22.[235] The final report was submitted in March 1994.[236] Apparently in response to allegations that the Phase II study was a sham conducted in only 48 hours, Doug Brown, then Interim Director of Facilities Division, directed Robert Niccum, the Director of the Real Estate Branch, to investigate the adequacy of the study and report back to Mr. Brown.[237] Based in part on an evaluation conducted by Janice Sawyer of EHSB, Mr. Niccum, concluded that the ENV America Phase II study "did not conform to the scope of services required by the District." Mr. Niccum also concluded that the "ENV America study fell far short of examining and reporting on matters which the District would have required of a consultant."[238] Mr. Niccum also noted the following:[239]

Among the important items included in the District's scope of services but missing from the ENV America report are the following:

- Quantifying hazardous substances and waste sources
- Quantifying contaminants, determination of degree of contamination and extent of offsite migration
- Locating all abandoned oil wells

---

[233] Inter-Office Correspondence from Richard Mason to LAUSD Board and Superintendent Ruben Zacarias, dated February 3, 1999. [IA-01027-32] *See* Exhibit 229.

[234] *Id.*

[235] Inter-Office Correspondence from Robert Niccum to Doug Brown, dated April 5, 1994. [BB-00192-194] *See* Exhibit 80. The memorandum was copied to David Koch and Susie Wong. The Internal Auditor also has identified a copy of a March 24, 1994 "DRAFT," which is substantially the same as the final version. [BL-0054-56] *See* Exhibit 78.

[236] *Id.*

[237] *Id.*

[238] *Id.*

[239] *Id.*, at [BB-00193].

- Exploring remedial alternatives to mitigate or abate the environmental hazards discovered in the investigation, and providing cost and duration estimates

- Providing diagrams showing the extent of contamination

Mr. Koch took then took up in April 1994 the matter of the exclusion with the EHS Branch from the Shimizu Phase II process, objecting that Mr. Shambra had incorrectly excluded EHS from their proper role. Mr. Thompson apparently supported Mr. Shambra in this matter, supporting Mr. Shambra's lead role in accomplishing those tasks required to obtain SAB funding for Belmont, including relying on the seller to pay for the preparation of the Phase II.[240] EHS was thereafter, until the fall of 1996, effectively excluded from further work on Belmont.

Mr. Mason has explained the response of the LAUSD to the findings of Mr. Niccum's inquiry as follows:[241]

> After Mr. Brown shared a summary of Mr. Niccum's findings with me in 1994, I responded to Superintendent Sidney Thompson via confidential memorandum that the expedited environmental review of the Shimizu property would not necessarily become District practice for future school sites.[242]

Although the deficiencies of the Phase II study were identified, LAUSD did not undertake any additional investigation of the environmental conditions of the 24 acre Shimizu property following the closing of the sale in March 15, 1994, and after the deficiencies of the Phase II were identified by the widely circulated memorandum from Mr. Niccum, Real Estate Branch.

Mr. Cartwright has informed the Internal Auditor that the decision to ask the seller to conduct the Phase II study, and to purchase the 24 acre Shimizu property, was a "business decision" of the LAUSD. He has informed the Internal Auditor that this position is based, in part, on the statements made by Mr. Mason before the SAB. Mr. Mason confirms that LAUSD believed that the 24 acre Shimizu sale price of $30 million was viewed as a "golden" opportunity, and that the environmental problems were anticipated to be far less involved than those addressed during the consideration of the 11 acre middle school site.[243] Mr. Cartwright observed to Mr. Mason in a letter dated May 27, 1994, reflecting on his performance in the Shimizu deal, "I believe the Shimizu transaction dramatically illustrates what we can do for the District."[244]

---

[240] Both Mr. Koch and Mr. Thompson's separate interviews with the Internal Auditor's team confirm the basic conversation and outcome of this meeting.

[241] Inter-Office Correspondence from Richard Mason to LAUSD School Board and Superintendent Ruben Zacarias, dated February 3, 1999, page 2. [IA-01027-32] *See* Exhibit 229.

[242] *See* [DK2-00009-10], for follow-up memorandum from Richard Mason to Superintendent Sidney Thompson. *See* Exhibit 329.

[243] Interview with Richard Mason, dated June 28, 1999.

[244] Exhibit 294, p. 4.

CHAPTER 9

THE BELMONT LEARNING COMPLEX CONCEPT

After acquiring the Shimizu parcel, LAUSD now had a very large piece of property that totaled approximately 35 acres. As designated in this *Report of Findings*, the 11 acre "Temple-Beaudry" site was acquired for purposes of developing a middle school, and the 24 acre Shimizu site was acquired for the construction of a new high school. This original development scheme changed soon after the total 35 acre parcel was assembled into the Belmont Learning Complex.

A. Academy High School

Although the 11 acre site was originally conceived for the site of a middle school and the 24 acre Shimizu site for a senior high school, community members and staff began to re-think the problems associated with the proximity of the two new schools with the existing Belmont High School. Following staff input on this problem, a task force was established to obtain the input of staff, faculty, students and community members to develop the concept that ultimately became Belmont Learning Complex. The Academy concept would create "small within large" by creating smaller schools centered around particular trades, skills and career paths.

1. Mixed Use Development

As originally conceived, the Belmont Learning Complex concept was intended to develop the 35-acre site located immediately west of downtown Los Angeles with a mix of educational, residential, community, and commercial uses.[245] Belmont would have the following components:

- A modern senior high school campus for up to 3,550 students on a regular school year and up to 5,150 students on a year round calendar basis
- Up to 125 affordable housing units
- Up to 27,000 square fee of community facilities, potentially including child care, youth center, medical clinic, or other community uses
- Up to 78,700 square feet of retail facilities, potentially including a supermarket, drugstore, or other similar uses.[246]

The purpose of Belmont was to fulfill the following objectives:[247]

---

[245] Final Environmental Impact Report for the Belmont Learning Complex, October 1996. [BEL-01253] *See* Exhibit 118.

[246] *Id.*

1. Provide essential educational facilities for high school and middle school students in Belmont High School and Middle School attendance area of the LAUSD. The attendance area is currently served by a single senior high school with an attendance of over 4,400 students. Over 3,000 students are bused out of the area on a daily basis.

2. Provide needed modern high school facilities to support innovative academic programs. The Belmont was conceived to contain five career academies, each focusing on certain fields and skills, such as travel and tourism, health and human services, engineering and environmental services, law and government and international studies.

3. Provide needed affordable housing in the area. The Belmont was intended to contain the construction of new affordable multi-family housing units.

4. Provide needed support community service facilities. The development of the site was intended to provide community-serving retail and service facilities.

5. Provide cohesive and harmonious development appropriate to the site and surrounding area. The Belmont was intended to transition between a lower-scale development in the Temple/Beaudry area and the high-scale density of nearby downtown development.

Belmont was intended to be a different type of school in several respects. First, Belmont as originally conceived was not merely a school, but was intended to include a multi-purpose development. The Belmont design incorporated low cost housing, retail components, and a "joint powers authority" with the City of Los Angeles for certain recreational and community facilities. The school was seen as an anchor for the overall development of this multi-purpose project.

---

[247] *Id.*, at ES-2. [BEL-01258] *See* Exhibit 118.

CHAPTER 10

REQUEST FOR QUALIFICATIONS AND REQUEST FOR PROPOSAL PROCESS FOR DEVELOPMENT OF BELMONT

As described above, the LAUSD developed a complicated mixed-use academy school joint venture that was originally conceived as having a retail component, housing and shared "joint powers authority" with the City of Los Angeles to develop and construct recreational facilities. Instead of competitively bidding the project, as is normally required by state law, LAUSD staff assembled a developer selection team that ultimately chose the highest cost "cadillac" design-build development proposal.[248]

A. Request For Qualifications

The Request for Qualifications ("RFQ") was circulated in April 1994. The RFQ specifically instructed responding parties to conduct their own environmental due diligence and the LAUSD promised to share its data on existing environmental conditions with the interested developers.[249] On April 12, 1994, LAUSD distributed a clarification of the RFQ, which stated that the LAUSD "request[ed] that Mr. Ernie Vasquez serve in at least an overall supervisory architect role."[250] The following six development teams responded, including Smith and Hricik Development, CRSS/Telacu, Temple Beaudry Associates (Obayashi Corporation), Temple Beaudry Partners (Kajima Urban Development LLC), Goldrich Kest & Associates, and Mount Street Properties.[251]

The LAUSD assembled a team of consultants to evaluate the RFQ responses including Martin Croxton of Coopers & Lybrand (public accountancy firm), Ernesto Vasquez of McLarand, Vasquez & Partners (architect firm) and Wayne Wedin of Wedin Enterprises (lead business negotiator).[252]

The RFQ responses were evaluated by using a 19 point "suggested matrix for RFQ screening" prepared by Dominic Shambra and Wayne Wedin.[253] This matrix emphasized the mixed use and design-build experience of the responding development teams.[254] The evaluation matrix consisted of the following three main categories which divided up a theoretical total of 100 points: (1) Category A (25 points) including, project understanding, project approach, work relationship with District and City, compliance with identified school and community service goals; (2) Category B (25 points) including, achievement of District goals, minority participation, community involvement, jobs created, compliance with RFQ requirements; (3) Category C (50 points) including project economics, market research, feasibility, project financing and suggested revenue to the District.[255]

---

[248] Interview with Dominic Shambra, dated August 9, 1999.

[249] Request For Qualifications For The Temple/Beaudry Project, April 1994, p. 2. [IA-58940-969] *See* Exhibit 250.

[250] Request For Qualifications Of Developers -- Clarifications, April 12, 1994, p. 1. [IA-58971-984] *See* Exhibit 251.

[251] Memorandum from Wayne Wedin to Dominic Shambra and Ernie Vasquez, dated August 26, 1994. [IA-59066-071] *See* Exhibit 252.

[252] [BelmontLD09928] *See* Exhibit 259.

[253] Memorandum from Dominic Shambra and Wayne Wedin to All Development Teams, dated October 6, 1994. [IA-59083-084] *See* Exhibit 253.

[254] Suggested Matrix for RFQ screening, LAUSD Temple Beaudry Project. [BLC09926] *See* Exhibit 254.

The evaluation interviews and investigation were completed on July 6, 1994.[256] The following two teams were rejected from further consideration: Smith and Hricik Development, and CRSS/Telacu. The rejection of the two development teams was based, in part, on reported unwillingness to assume a share of the financial responsibility for the non-school components, (i.e., housing and retail), with the LAUSD or share any potential profits that would be generated by the development.[257]

1. Request For Proposals -- Phase I

The Request for Proposals (RFP) process was organized into two phases. In Phase I, the qualifications of the responding entities was examined and the basic concepts of the proposal were evaluated.

On December 12, 1994, Mr. James McCoy of the financial consulting firm, Coopers & Lybrand, questioned the feasibility of the project proposals for the retail component of the project because "none of the teams presented current market research to support their positions."[258] Mr. McCoy was "concerned about the degree of optimism expressed . . . pertaining to the attractiveness of the market for retail development."[259] It appears that the developer's retail proposals were not independently analyzed for feasibility and were instead based on the developer's own statements.[260] Other aspects that were analyzed included proposed financing for the project, financial strength of the team, the economics of the proposed project, business terms, experience on other projects, and performance at the presentation sessions.[261]

The Obayashi team ("Temple Beaudry Associates"),[262] ultimately one of the developers that was excluded from continuing to Phase II of the RFP process, expressed extreme doubt regarding the feasibility of locating retail development adjacent to a high school. The Obayashi team expressed its view that there was an "insufficient market" for a retail development and, as a result, the Obayashi team omitted retail cash flow projections from their proposal.[263] Dominic Shambra acknowledged that the retail component of the project was never seen as a big part of the project cost recoupment calculation, and he estimated only a $7-8 million revenue stream from the retail component of the project.

---

[255] *Id.* [BEL009507]

[256] July 6, 1994 Letter from Wayne Wedin to Dominic Shambra. *See* Exhibit 259.

[257] *Id.*

[258] December 12, 1994 letter from James McCoy to Dominic Shambra. *See* Exhibit 257.

[259] December 12, 1994 letter from James McCoy to Dominic Shambra. *See* Exhibit 257.

[260] December 28, 1994 letter from Coopers & Lybrand to Dominic Shambra. *See* Exhibit 258.

[261] *Id.*

[262] Not to be confused with the Kajima Urban Development LLC team ("Temple Beaudry Partners").

The RFP evaluation process was described by Dominic Shambra, Director of LAUSD's Planning and Development Office, as beginning with a preliminary evaluation, followed by individual meetings for clarification, neighborhood outreach by the district, and formal interviews by the evaluation committee. A final decision was then made on the development teams that would be invited to submit Phase II proposals.[264] Mr. Shambra identified the lack of specifications in the RFP as creating a major flaw in evaluating the responses of the development teams. Lack of uniformity in the responses was a direct result of the non-specific nature of the RFP.

There were only three written evaluations of the Phase I responses. One evaluation prepared by the public accountancy consultant Coopers & Lybrand, and two written evaluations that were prepared by the outside lawyers at O'Melveny & Myers (Lisa Gooden and David Cartwright).

At the end of the Phase I process the following teams were selected to continue to the next phase of the process: Goldrich Kest & Associates, CRSS/Telacu, and Temple Beaudry Partners (Kajima Urban Development LLC).

On January 25, 1995, notwithstanding Mr. Vasquez' role as the LAUSD architect in designing initial schematics for Belmont as well as a member of the team evaluating RFQ responses, Dominic Shambra wrote to Ernie Vasquez to permit him to "participate with any of the RFP respondents, if you wish, and (sic) will in no way receive any consideration or advantage because of your concept drawings or participation as a member of a development team."[265] As it ultimately turned out, Mr. Vasquez was apparently already listed as part of the CRSS/Telacu and Temple Beaudry Partners, the eventual winning development team, which he subsequently joined on a full-time basis after receiving Mr. Shambra's letter of January 25, 1995.

In addition, David Cartwright writes a letter dated April __, 1994, to Richard Mason, LAUSD General Counsel, disclosing O'Melveny & Myers pre-existing representation of Kajima International Inc.

2. Request For Proposals -- Phase II

The results of the Phase II evaluations were communicated to Dominic Shambra on June 9, 1995.[266] The evaluation team members continued to consist of the same individuals that took place with the exception of the consultants from Coopers & Lybrand who were replaced by Kenneth Leventhal & Company. The following individuals conducted the evaluation of the Phase II proposals:

---

[263] RFP Response of the Obayashi Team. *See* Exhibit 261.

[264] [BelmontLD09926] *See* Exhibit 254.

[265] Letter from Dominic Shambra, Director Planning and Development to Ernesto Vasquez, President of MV&P International, dated January 25, 1995. [IA-59102] *See* Exhibit 255.

[266] Memorandum from Temple Beaudry Proposal Review Team to Dominic Shambra, dated June 9, 1995. [IA-56697-722] *See* Exhibit 260.

Coordinator:	Dominic Shambra	LAUSD Planning & Development Office
Legal:	David Cartwright	O'Melveny & Myers
	Lisa Gooden	O'Melveny & Myers
Fiscal:	Steve Valenzuela	Kenneth Leventhal & Co.
	Robert Starkman	Kenneth Leventhal & Co.
Asset Management:	Wayne D. Wedin	Wedin Enterprises, Inc.

The evaluation process consisted of an initial meeting, the preparation of summary reports on each RFP response, and separate, individual interviews with the responding development teams. This information was then used to analyze the responses according to the criteria established in a "Project Evaluation Matrix."[267]

The RFP evaluation matrix consisted of the following three main categories which divided up a theoretical total of 100 points: (1) Category A (30 points) including, project understanding, project approach, work relationship with District and City, compliance with identified school and community service goals; (2) Category B (20 points) including, achievement of District goals, minority participation, community involvement, jobs created,, compliance with RFP requirements; (3) Category C (50 points) including project economics, market research, feasibility, project financing and suggested revenue to the District.[268]

On May 23, 1995, an "evaluation" meeting was conducted to compare the respective scoring of individual members of the RFP evaluation team.[269] The only written record of the evaluation team's analysis was prepared by David Cartwright and Lisa Gooden, who were attorneys for O'Melveny & Myers, and Steve Valenzuela, Senior Manager from E & Y Kenneth Leventhal Real Estate Group. Mr. Cartwright gave the three developers the following scores: Goldrich Kest (76 points), CRSS/Telacu (80 points), and Temple Beaudry (86 points). Ms. Gooden gave the three developers the following scores: Goldrich Kest (76 points), CRSS/Telacu (87 points), and Temple Beaudry (88 points). Steve Valenzuela gave the three developers the following scores: Goldrich Kest (75 points), CRSS/Telacu (83 points), and Temple Beaudry (89 points).

On June 7, 1995, Steve Valenzuela prepared an evaluation letter that accessed the identified guaranteed and contingent revenues proposed to the LAUSD from each development team.[270] This analysis contained a $20 million overstatement of the Temple Beaudry Partners' contingent revenue. Mr. Shambra has stated that the contingent revenues were not given any weight in the evaluation processes.[271] However, the comments from David Cartwright and Lisa Gooden evaluation of the economic feasibility factors indicates that they considered the "contingent retail" proposal "realistic".[272]

---

[267] Letter from David Cartwright and Lisa Gooden to Wayne Wedin, dated June 1, 1995. [OMM BEL009505-9511] *See* Exhibit 262.
[268] *Id.* [BEL009507]
[269] *Id.* [BEL009505]
[270] Letter from Steve Valenzuela to Wayne Wedin, dated June 7, 1995. [OMMBEL009513-517] *See* Exhibit 263.

The Temple Beaudry Partners proposal included the following:

- Project costs of $113,757,598;[273]
- 80,000 square feet of retail commercial space and parking;
- 22,000 square feet of community-oriented facilities;
- 203 units of low to moderate housing on 4 acres along Toluca Street;
- developer financing of pre-development costs and District option to buy.[274]

The evaluation team "unanimously" recommended the selection of Temple Beaudry Partners "after a thorough process of individual and group analysis" for the development team.[275] Of the three RFP responses on Belmont, the Temple Beaudry Partners' proposal was the most expensive, confirming Shambra's views that his developer selection team ultimately chose the highest cost "cadillac" design-build development proposal.[276]

---

[271] Interview with Dominic Shambra, dated August 9, 1999.

[272] Letter from David Cartwright and Lisa Gooden to Wayne Wedin, dated June 1, 1995 [at OMMBEL009511] *See* Exhibit 262.

[273] Temple Beaudry Partners' Supplemental Response to Request for Proposal, dated March 15, 1995 [at IA-33520-521] *See* Exhibit 264.

[274] Temple Beaudry Partners' Response to Request for Proposal, dated March 14, 1995. [IA-33599-33653] *See* Exhibit 265.

[275] Letter from Wayne Wedin to Dominic Shambra, dated June 9, 1995. [OMMBEL009496-009497] *See* Exhibit 266.

[276] Interview with Dominic Shambra, dated August 9, 1999.

CHAPTER 11

CONTRACTUAL RELATIONSHIPS BETWEEN LAUSD AND TEMPLE BEAUDRY PARTNERS LLC

A. The RFP Evaluation Team's Unanimous Recommendation Was Forwarded To The Board And Adopted

On September 18, 1995, the LAUSD School Board approved the Business and Operations Committee Report #2 authorizing staff to proceed with "Exclusive Negotiation Phase" of the process to create a career development partnership high school and Belmont Learning Complex, and authorizing the Director of Planning and Development, Dominic Shambra, to enter into an agreement to conduct exclusive negotiations with Temple Beaudry Partners,[277] sparking immediate public controversy.[278]

B. Temple Beaudry Partners Design Oversight Committee

In light of the controversy within the School Board over both the idea of a single developer with whom to negotiate as well as the overall design, the School Board established on November 20, 1995, a confidential Temple-Beaudry Partners Oversight Committee ("Oversight Committee") to advise the School Board on the economics and design issues arising in the negotiations with Temple-Beaudry Partners LLC.[279] Dr. Roger Rasmussen, the director of the LAUSD Independent Analysis Unit, was asked to identify and establish a committee of experts to oversee the development of the BLC site. Dr. Rasmussen contacted more than 70 individuals, seeking people who were willing to assist and did not have a conflict of interest. The committee was designed to report directly to the School Board. The final members of the Oversight Committee included the following:

Edward Blakely	Dean of the School of Urban and Regional Planning, University of Southern California
Jan Breidenbach	Executive Director of the Southern California Association of Non-Profit Housing
Rose Diamond	Senior Director for Planning and Capital Development for the New York City Schools

---

[277] [IA-01157] *See* Exhibit 96.

[278] Approval of the Temple Beaudry Partners development team sparked opposition from a number of interested parties, including the Hotel and Restaurant Workers Union, Local 11 ("Local 11") and members of bidding teams that were not selected by LAUSD.

[279] The School Board followed the procedures for such a committee set forth in Government Code §§53060 and 54756.8.

Malcolm Riley	Partner in Riley/Pearlman Company, a shopping center owner/developer and manager
John Trittipo	Principal in Trittipo and Associates, an architectural firm in Carlsbad, California
Eduardo Vivas	Industrial Engineer with the Dade County Public Schools in Miami, Florida
Thomas Wierdsma	Area Manager for Hensel Phelps Construction Company.

According to Dr. Rasmussen, none of the members of the Oversight Committee had environmental expertise. Dr. Rasmussen defends this omission in that he did not feel an environmental expert was required because the Oversight Committee was tasked to oversee economic and design issues. He felt environmental issues were being addressed by others. In his view, it was not his function or that of the Oversight Committee to oversee or certify the safety of the site. Dr. Rasmussen indicated that the committee initially brought up some environmental issues relating to preparation of the EIR and site mitigation issues because the members were concerned those issues would delay development of the project.[280]

The Oversight Committee met eleven times before it became inactive,[281] including on the following dates and topics:

1) November 17, 1995 (school size, environmental impact studies, other preparatory work, retail component)

2) December 16, 1995 (school component, retail component, proposed land swap, environmental concerns, project financing)

3) January 13, 1996 (review of the draft MOU materials, housing component, timeline for planning activities, general exchange of information and views)

4) February 3, 1996 (design of the school, other concerns)

5) February 10, 1996 (design of the school, other concerns)

6) March 16, 1996 (independence of houses, separation of houses, reimbursement if the joint venture fails)

7) June 15, 1996 (review of draft MOU)

---

[280] Interview of Dr. Roger Rasmussen, September 9, 1999

[281] Based upon the evidence provided to the Internal Auditor, this Oversight Committee has never been disbanded. However, the Oversight Committee has not met since April 2, 1997, that its charge was to advise the School Board on the negotiations with the developer, with whom the LAUSD finalized the Development and Disposition Agreement on April 30, 1997.

8) September 21, 1996 (proposed amendments to the MOU, developer fees, alternative if there is no agreement with TBP)

(9) November 14, 1996 (retail component)

(10) January 25, 1997 (draft DDA)

(11) April 2, 1997 (proposed DDA).[282]

Following the November 17 meeting, Dr. Rasmussen authored a memorandum on November 22, 1995, indicating that the Oversight Committee recommended that the EIR investigation be expedited because they were concerned any delay would slow development. During the course of the Oversight Committee's review, the general environmental conditions of the site became known to the Oversight Committee members. For instance, Dr. Rasmussen stated that the Oversight Committee was aware of the past operations of the property as an active production oil field and various automobile repair/service stations. They were aware that there was a methane seepage problem, principally based on briefings to the Oversight Committee by Messrs. Shambra and Cartwright. In Dr. Rasmussen's opinion, neither attempted to minimize or hide the environmental issues from the Committee.[283]

In a December 16, 1995 memo from Dr. Rasmussen to the Oversight Committee,[284] he documents the Oversight Committee's desire to review more information regarding the environmental remediation work. Based upon concerns raised by Dean Blakely, the Oversight Committee specifically noted that the "Phase 2 toxic study as not been done. Phase III (Remediation) should be started now."[285] Dr. Rasmussen's personal notes indicate that the Oversight Committee went on to note that

> We don't understand why there is such a rush to reach an MOU with so many issues outstanding. [We] would like to see critical path analysis showing that this is the critical component. Site remediation was excluded from T/B proposal.[286]

The issue was revisited at the January 13, 1996 meeting of the Oversight Committee. In the formal minutes of the meeting, it appears that Messrs. Shambra and Cartwright resolved the contamination issue on the following basis:

> There was a brief discussion of toxics on the site. Staff indicated that soil contamination is not likely to be a major issue for the site, and that the developer will be responsible for all mitigation.[287]

---

[282] Interview of Dr. Roger Rasmussen, dated September 9, 1999

[283] Interview of Dr. Roger Rasmussen, September 9, 1999. [RR-04406] *See* Exhibit 369.

[284] [RR-01669] *See* Exhibit 363.

[285] Notes of Dr. Rasmussen at the meeting. [RR-00446] *See* Exhibit 364.

[286] Notes of Dr. Rasmussen at the meeting. [RR-00447] *See* Exhibit 365.

Dr. Rasmussen believes the Oversight Committee did not follow up any further on these environmental issues after this meeting because the Oversight Committee was given verbal assurances by Mr. Shambra that the environmental issues would be handled.[288]

In a December 20, 1995, memorandum to Mr. Henry Jones, the LAUSD's Chief Financial Officer,[289] Dr. Rasmussen argued that the Oversight Committee had jurisdiction over certain environmental issues because the Oversight Committee was charged with overseeing the economic aspects of the Belmont development. Dr. Rasmussen recalls that approximately $1 million was set aside for environmental contingencies, but he also understood from his discussions with Messrs. Cartwright and Shambra that environmental clean up costs, if required, would not be expensive.

By mid-February, 1996, in summarizing the key issues before the LAUSD with regard to execution of the impending Memorandum of Understanding as to the basic deal with Temple-Beaudry Partners LLC, Dr. Rasmussen enumerated what the Oversight Committee's views were as to the key issues as follows:

> We think the key issues include control of the school design and quality of materials, the developer's commitment tot do the retail portion and provide fair compensation to the District for the use of its land, the proposed land swap, how shared costs will be calculated, the agreed method of financing, and how the construction project will ultimately be managed.[290]

In the first major preliminary assessment of the cost of the Belmont proposed development, Turner/Kajima on June 4, 1996, allocated $2,000,000 for "unforeseen subsurface conditions."[291]

C. Disposition And Development Agreement

LAUSD and Temple Beaudry Partners ("TBP") entered into a Disposition and Development Agreement regarding Belmont ("DDA") as of April 30, 1997, as a "Design Build" project.[292] This approach bypasses the competitive bidding process in favor of other purported advantages. Recital C of the DDA identifies speed and cost reduction as anticipated advantages of this approach. That exclusive negotiation right was documented by the ENA, as amended as of April 10, 1996.

---

[287] Minutes of the January 13, 1996 Oversight Committee Meeting. [RR-00462] *See* Exhibit 366.

[288] Interview of Dr. Roger Rasmussen, September 9, 1999

[289] PBELL 02969, page 4.

[290] RR-00524; Memorandum from Dr. Rasmussen to the School Board and Mr. Shambra dated February 16, 1996. *See* Exhibit 367.

[291] RR-00663 Summary of Preliminary Cost Estimates. *See* Exhibit 368.

[292] The DDA is the successor to an August 5, 1996 MOU, amended as of October 7, 1996. [DK-02073-86] *See* Exhibit 121.

The DDA provides a detailed description of Belmont's functions and components, and contemplates the design and building of the structures that will constitute Belmont. The components identified are a "School Component," a "Housing Component," and a "Retail Component." The DDA is expressly made subject to LAUSD School Board approval and "satisfactory certification and implementation of the [EIR] adopted based upon findings of the LAUSD Board on November 18, 1996 . . . ." (Recital H). The Agreement sets forth the goals and objectives of the Belmont Project (Recital I), and the authority to undertake the Project. (Recital J).

Section 1.1 of the DDA defines the project components, structure and budget. TBP is required to obtain a Completion Guaranty from Kajima Corporation (the "indirect parent" of TBP's general partner) of TBP's obligations regarding: (a) the Overall Fixed Development Price, (b) the Project Schedule and Completion, (c) Completion in accordance with Plans and Specifications, (d) Liquidated Damages, and (e) all of TBP's other obligations under the DDA.[293] See Section 1.2 of the DDA.

The DDA identifies McLarand, Vasquez & Partners as Belmont Architects. Schematic and Design Development Drawings by the Architects were made exhibits to the DDA to "generally describe the scope and design of the School Component and Retail Component and their integration." See Section 1.3 (a), (b). The architectural work for the Housing Component was separately allocated to the Housing DDA. *Id.* at 1.3(c).

LAUSD and TBP agreed to cooperate to obtain needed approvals from such entities as the City of Los Angeles and the State of California. See Section 1.4. This provision did not expressly allocate responsibility for obtaining those permits.

Section 1.5 sets forth the Budget and the Fixed Price for development of Belmont. By reference to exhibits, Subsection 1.5.1 provides the Guaranteed Maximum Price for the various components. Section 1.5.1(a)(i) also provides for an upward adjustment to the School Component GMP in the event the Retail Component is not built. The estimate provided for that adjustment "is in the range of $6,000,000 [to] $7,000,000," but no specific amount is given beyond the statement that the School GMP "shall be equitably adjusted." This lack of specificity exists despite the undesirability of the resulting uncertainty.

A related issue was raised with respect to the MOU by Roger Rasmussen of the Temple-Beaudry Design Oversight Committee in a July 30, 1996 memorandum to the LAUSD Board. That memorandum suggested, among other things, that clarifications be made to the method of allocating costs between the school and retail aspects of Belmont, which was considered too favorable to the Retail Component (to the disadvantage of the School Component and the added expense of the District).[294] Mr. Rasmussen raised questions about the viability of the Retail Component, the failure of which would result in the loss of significant financial benefit to the LAUSD: "The retail component still appears to be economically marginal." *Id.* Additionally, concerns were expressed that the project's costs were too high, and "value engineering" was proposed to reduce those costs. *Id.* The DDA as executed instructs LAUSD and TBP to "collectively engage in value engineering to control the costs of constructing the School Component" subject to state guidelines, LAUSD policies, and consistency with the existing plans for the school. Section 1.5.1(a)(i). The majority of such cost savings, if any, were to go to the LAUSD. Section 2.3.

---

[293] Subsection (f) of section 1.2 excludes from the K-C Guaranty "costs, delays or the costs of delay" caused by Environmental and Site Conditions for which LAUSD is responsible, permitted delays, actions by LAUSD or certain entities contracted by LAUSD, or certain permitted GMP changes.

Section 1.5.2 of the DDA sets forth the costs which could be considered the "Cost of the Work" paid by TBP to the Contractor, Section 1.5.2(b), as well as costs excluded as being insufficiently related to Belmont (such as the Contractor's capital expenses). Section 1.5.2(c). Permitted increases to the GMP, which could result in a higher ultimate cost to the LAUSD, under section 1.5.3 included remediation costs for: (a) costs for Hazardous Material remediation in excess of allowances, (b) certain changes in School Component requirements, (c) additional costs associated with CEQA requirements and/or related mitigation measures, (d) certain costs associated with conditions imposed to obtain governmental approvals, (e) certain new regulations or mandates for schools, (f) site conditions, including the "oil field conditions" and "the discovery of Hazardous Materials, (g) delays in construction resulting in actual cost increases caused by the site conditions in clause (f) "and any other matters described in clauses (a) through (e)," and (h) TBP costs, if any, to acquire certain additional real property. Given the status of a number of the matters set forth in (a) through (h), there was a high likelihood that additional costs would be incurred.

It was the view of the LAUSD personnel that, rather than incorporate these costs into the GMP for a "sum certain," it would be better for the LAUSD to pay for them as such costs arose.[295] This approach was shaped by a belief that the LAUSD, as owner of the Belmont property, would be liable for these costs in any event, and that the District should retain the responsibility and authority over issues related to health and safety, as well as by a concern that TBP (or any other developer) would have necessarily inflated such costs due to uncertainty.[296] The result of including these costs in the GMP would, in addition, have increased the stated maximum costs of Belmont substantially from a base that already exceeded the corresponding state standards.[297]

While such an approach might have elicited even more scrutiny, it might also have been a more accurate representation of the true costs of building on this site. Further, the DDA could have provided a cap for these costs and shifted responsibility to the developer. LAUSD rejected this approach, however, preferring to retain control of setting acceptable environmental standards.

---

[294] *See* Memorandum from Roger Rasumussen to LAUSD School Board, dated July 30, 1996, p. 2. [OMM-0007358-61] *See* Exhibit 304.

[295] Interview with David Cartwright, dated July 29, 1999.

[296] *Id.*

[297] *See* Memorandum from Roger Rasumussen to LAUSD School Board, dated July 30, 1996, p. 2. [OMM-0007358-61] *See* Exhibit 304.

Article 2 of the DDA provides for TBP's compensation, which is set by section 2.1 at $3,262,500 for the School Component. A "Completion Guaranty" in the amount of an additional $1,600,000, to be paid by the District in two installments, is provided for in Section 2.2. Incentives for TBP to complete Belmont "under budget" are provided by Section 2.3, which gives TBP a share of certain cost savings and an early completion bonus.

Article 3, entitled "Environmental and Site Conditions," discusses the known site conditions with emphasis on the Oil Field Conditions. See sections 3.1 and 3.2(c). Section 3.2 also discusses the CEQA status of Belmont and refers to the required CEQA mitigation and implementation of that mitigation. See Sections 3.2(a) and (d). The DDA then contains two separate sections allocating responsibility for environmental conditions. The first, Section 3.3, addresses pre-existing, known contamination and the second, section 3.4, generally addresses claims arising from contamination. With respect to pre-existing contamination, TBP is "exculpated" from costs or delay. That section allows TBP to increase the Overall Fixed Development Price to recoup costs incurred by TBP to perform remediation. See Section 3.3. LAUSD also indemnifies TBP for any Claims caused by or arising from Hazardous Materials, except to the extent such Claims are caused by negligence or willful misconduct of TBP or entities related to TBP.[298]

Despite these risk allocations to the LAUSD, TBP remained responsible for constructing Belmont "in a workmanlike and non-negligent manner." Section 3.4(c). TBP also covenanted and agreed "that all construction shall be performed in accordance with all applicable laws, ordinances, rules and regulations." See Section 4.8. TBP further warranted that it would "be responsible for both the design and construction of the Project . . . [and] that the Project . . . shall comply with the DDA. All available Uniform Commercial Code warranties shall also apply to TBP performance . . . ." See Section 4.10(a). TBP also warranted and guaranteed that the School Component would satisfy the State's standards for school construction. See Section 4.10(b). TBP had broad design and construction responsibility and authority.

D. Internal Auditor's Comments On The DDA

The Internal Auditor believes a strong argument can be made that TBP failed to fulfill its warranties to comply with the various applicable requirements by neglecting to evaluate the site properly and failing to design and construct in a manner appropriate for the site conditions. This is especially true because TBP was on notice of these conditions and because the LAUSD would pay for the costs of addressing the hazardous materials. Had TBP properly designed an appropriate system for addressing oil field gases and other contamination, TBP could have ensured timely and adequate protection against methane and other conditions now plaguing the site. Had TBP done so, arguably none of the construction delays and uncertainties now being experienced would have occurred. While LAUSD certainly failed to oversee and demand that TBP properly fulfill these responsibilities, TBP is in no way absolved for its failure to live up to its warranties and contractual obligations. Furthermore, under Section 5.1.1 "Default/Failure to Perform of TBP", such failure to fulfill its obligations and/or violations of applicable requirements could constitute a default of TBP under the DDA entitling the LAUSD to damages and/or other remedies as provided by the DDA. See sections 5.1.1(f) and (g).

---

[298] It is noteworthy that Richard Mason had significant misconceptions about the DDA's allocation of responsibility and risk relating to Hazardous Materials. While Mason disclaimed having prepared or reviewed any documents in preparation for his interviews with the Internal Auditor, it is remarkable that he had not familiarized himself with this document for purposes of understanding the issue and advising the LAUSD and the Board. Interview with Richard Mason dated June 28, 1999.

It is also important to note that usual and customary contractual terms are missing from the DDA, such as the absence of a termination for convenience provision and a project suspension provision providing caps on the amounts owing to the developer in the event of cancellation or suspension, respectively. The cancellation cap might allow the developer the profit allocable to that portion of the project completed as of cancellation, plus payment for its expenses on that portion of the project. The contractor would not receive its anticipated profit for the remainder of the project, and the owner would not pay for costs of work not performed. Similarly, a suspension provision would provide certainty to the owner regarding the costs resulting from suspending the project for a given amount of time.

For example, the Associated General Contractors of California, Inc., Form AGCC-1 (Revised 8/97),"Standard Form Prime Contract Between Owner and Contractor (1998)" provides:

> "19.3 The Owner reserves the right to terminate the Work for its [the Owner's] convenience upon notice in writing to the Contractor. In such event, the Contractor shall be paid its actual costs for that portion of the Work performed to the date of the termination and for all costs of termination, including demobilization and any termination charges by vendors and subcontractors, plus 15 percent of all such costs for overhead and profit. If, for any reason, within six (6) months of the actual date of cessation of work the Owner elects to resume the Work, using another contractor, the Contractor shall be entitled to payment of its [the Contractor's] actual profits for performance of all of the Work."

An additional example, The American Institute of Architects, Document A111-1997, "Standard Form of Agreement Between Owner and Contractor – Cost Plus Fee With Negotiated Guaranteed Maximum Price (1997)", provides:

> "13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in Article 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Subparagraph 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Paragraph 13.2 below [i.e., the GMP shall not be exceeded, nor shall it exceed the Contractor's fee based on the Cost of Work to the date of termination], except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed."

The American Institute of Architects, Document A201-1997 – "General Conditions of the Contract for Construction (1997)", referenced immediately above, provides:

"14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall:

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed."

A further example, The American Institute of Architects, Document A111-1997, "Standard Form of Agreement Between Owner and Contractor – Cost Plus Fee With Negotiated Guaranteed Maximum Price (1997)", provides:

> "13.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Subparagraph 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Subparagraphs 5.1.2 [Setting Contractor's Fee] and Paragraph 6.4 [Equitable Adjustment of Contractor's Fee] of this Agreement.

The American Institute of Architects Document A201-1997 – "General Conditions of the Contract for Construction (1997)", referred to above, also provides:

> "14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE
>
> 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.
>
> 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Subparagraph 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:
>
> .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

In the current Belmont situation, such provisions would be of great utility. Neither concept was novel at the time of negotiating the DDA, yet neither was included. Indeed, Mr. Cartwright of O'Melveny identifies "the most significant sources" for the DDA in Mr. Cartwright's March 7, 1998 letter to Mr. J. Crogan, Chief Researcher, Joint Legislative Audit Committee of the California Legislature, as follows:

1. AIA Document 191 – Agreement between Owner and Design Builder (Schedule no.2).

2. EJCDC 1910-40 – Conditions of the Contract between Owner and Design/Builder (Schedule no. 3).

3. AGC Document No. 415 – Design-Build Agreement and General Conditions (Schedule no. 4).

4. FIDIC Conditions of Contract for Design-Build and Turnkey (Schedule no. 5).

As is true of the examples cited above, these "source" documents relied upon by Mr. Cartwright collectively provide multiple examples of termination and suspension for convenience or in the event the project is abandoned, and specify the economic arrangement in such events. Inexplicably, no such provisions were included in the DDA despite their obvious utility and the fact that such provisions were peppered throughout available precedents.

The Internal Auditor has found no communication by the LAUSD directing Mr. Cartwright to exclude such provisions from the DDA, nor any communication from Mr. Cartwright or any other O'Melveny attorney counseling the LAUSD regarding the disadvantages of excluding such provisions. To the extent that Mr. Cartwright failed to recommend including these provisions, or to the extent Mr. Cartwright failed to warn the LAUSD of the risks posed by excluding these provisions, it would appear that Mr. Cartwright and O'Melveny breached its duty and standard of professional legal care.[299]

Also missing from the DDA and otherwise from this Project is environmental insurance. If pursued, environmental insurance and the process of qualifying for it might have resulted in more complete, timely characterization and remediation of the Belmont property coupled with protection against remediation cost overruns and other benefits.[300] Remarkably, the Internal Auditor has found no evidence that Mr. Cartwright nor any other O'Melveny attorney ever proposed consideration of environmental insurance to the LAUSD in the context of the DDA negotiations, notwithstanding the widespread knowledge and practice of real estate lawyers. *See*

---

[299] O'Melveny has confirmed to the Internal Auditor that it was retained by the LAUSD to provide legal advice on the DDA. Mr. Cartwright wrote "both [the DDA and its predecessor MOU] were the product of O'Melveny & Myers." [IA-07335] *See* Exhibit 268.

[300] Interview with David Cartwright, dated August 12, 1999.

generally Richard D. Jones, "The Genesis and Growth of Insurance for "No Fault" Environmental Liability in Real Estate Transactions," in **Environmental Liability in Commercial Property Transactions: Risks and Responsibilities**, American College of Real Estate Lawyers (published by the Section of Real Property, Probate and Trust Law of the American Bar Association 1994), pp. 135-166.

CHAPTER 12

ENVIRONMENTAL ASSESSMENT OF THE BELMONT LEARNING COMPLEX – 1995-1996

A. The CEQA Process In 1995-1996

Soon after LAUSD concluded the RFP processes and selected Temple Beaudry Partners as the developer/contractor for the Belmont Learning Complex, many of the same LAUSD personnel involved in the selection of the developer met to map out the process for meeting the requirements of the California Environmental Quality Act. An ad-hoc "CEQA Committee" met on November 2, 1995. In attendance were Mr. Robert Niccum,[301] Ms. Lisa Gooden,[302] Ms. Martha Jordan,[303] Mr. Ed Szczepkowski,[304] Mr. Dan Nieman[305] and Mr. David Cartwright.[306] As reported in a subsequent memorandum from Mr. Cartwright, this CEQA Committee established a CEQA critical path schedule and a tentative Project Description.[307] The Project Description was based on Temple Beaudry Partners' development proposal, subject to further refinement. The Committee assigned the following CEQA tasks:

> Robert Niccum will talk with four potential environmental consultants regarding (i) existing environmental documents including the Temple/Beaudry EIR, the Belmont New Senior High Mitigated Negative Declaration, the Central City West Specific Plan EIR and the draft Shimizu Project EIR, (ii) the additional work necessitated by consideration of Site Option IB and IC, (iii) cost and possible stages of work.
>
> A subcommittee including Martha Jordan, Dan Nieman, David Cartwright and Lisa Gooden will meet within 2-3 weeks with city planning staff to give them a "heads up" on the imminent EIR and advise them on the City's role as "responsible agency" only.

The expeditious manner in which the CEQA review would be undertaken was partly an outcome of the review and analysis of the Oversight Committee established by the LAUSD School Board to review the negotiations between LAUSD and Temple Beaudry Partners regarding the Disposition and Development Agreement, as discussed above in Chapter 11.

---

[301] Director of LAUSD's Real Estate and Asset Management Branch.

[302] O'Melveny & Myers attorney for LAUSD.

[303] Latham & Watkins attorney for the developer Temple Beaudry Partners.

[304] O'Melveny & Myers attorney for LAUSD.

[305] Affiliated with Shimizu.

[306] O'Melveny & Myers attorney for LAUSD.

[307] Letter from David Cartwright to Dominic Shambra, dated November 8, 1995. [OMM0019577-OMM0019579] *See* Exhibit 100.

B. Preparation of Notice of Preparation

On December 21, 1995, Ms. Elizabeth Harris, with the assistance of consultant Irene Finklestein of the Cotton Beland Associates Inc., prepared a Notice of Preparation ("NOP") of a Draft Environmental Impact Report ("DEIR") for the Belmont Learning Complex.[308] The LAUSD was designated the lead agency for project approval. The project was described as follows:

> LAUSD in partnership with Temple Beaudry Partners proposes to develop a mixed use project consisting of: 1) high school facilities for up to 3,700 students on a regular schedule basis and up to 5,500 students on a year round calendar basis; 2) up to 200 affordable housing units; 3) up to 120,000 square feet of community retail potentially including child care, health clinic or police substation, or other similar facilities.[309]

The Initial Study that was prepared in connection with the NOP concluded that the project would result in a potentially significant impact on the environment. Therefore, LAUSD concluded that it was necessary to prepare a DEIR. In the Initial Study, the LAUSD disclosed the fact that hazards and geological problems were present at the Belmont Learning Complex site.[310] The Initial Study concluded that the hazards at the site were significant unless mitigation was incorporated; the Initial Study also disclosed the following information regarding the hazards present at the site:

> The project is located atop a historical oil field which represents a potential for methane gas seepage and, possibly, surface oil leaks from the abandoned 19th century wells. The project provides for retention of active producing wells to relieve gas pressure and includes construction of venting systems as appropriate. These and other measures, which will reduce the risk of accident to a less than significant level, will be further discussed in the EIR.[311]

The Initial Study also concluded that people would be exposed to "existing sources of potential health hazards" unless mitigation measures were incorporated into the project.

> Previous oil field operations and former commercial uses, such as gas service stations, resulted in some soils contamination at certain portions of the site. In the vicinity of the project are LAUSD and LADWP communication facilities which may emit electromagnetic fields. These concerns and mitigation measures developed to reduce potential hazards will be discussed in the EIR.[312]

---

[308] Attached to the Final Environmental Impact Report, dated October 1996 [at BEL 01546] *See* Exhibit 118.

[309] *Id*

[310] *Id.*, at [BEL 01554] *See* Exhibit 118.

[311] *Id.*, at [BEL 01564] *See* Exhibit 118.

[312] *Id.*

C. Failure Of The Governor's Office Of Planning And Research To Circulate NOP

While LAUSD correctly forwarded both the Initial Study and the NOP to the Governor's Office of Planning and Research ("OPR"), which functions as the State Clearinghouse for all CEQA documents,[313] these vital CEQA documents were not in turn forwarded to the California Department of Toxic Substances Control ("DTSC") for comment.[314] The DTSC has confirmed they did not receive this NOP document.[315] Ms. Loretta Lynch, Director of the Governor's Office of Planning and Research ("OPR") did not respond to repeated requests (written and telephonic) from the Internal Auditor for an explanation for how the OPR State CEQA Clearinghouse function could omit the state's lead environmental health agency from the CEQA review process on a school construction involving hazardous materials.[316]

D. The Draft Environmental Impact Report Process

A Draft Environmental Impact Report ("DEIR") was prepared and made available for public inspection and copying at the LAUSD Real Estate and Asset Management Branch on July 25, 1996. The LAUSD's effort to contact affected agencies, organizations, and persons who may have an interest in the project did not include any direct contract with the DTSC. Information, data, and observations resulting from these contacts and from the 45 day public circulation period were included in the DEIR. Comments from agencies, organizations, and persons were invited regarding the information contained in the DEIR. Ms. Elizabeth Harris was designated as the LAUSD staff contact person.[317]

Several comments and questions were raised by interested members of the public and public agencies. The Department of Conservation's Division of Oil, Gas, and Geothermal Resources commented on the hazards mitigation measures:

> The Department recommends that the Final Environmental Impact Report (FEIR) include a detailed plan for managing any buildup of reservoir pressure in that portion of the oil field. Monitoring and well maintenance should also be addressed in the FEIR.[318]

---

[313] *See* Resources Code §21080(d) and 14 CCR §15082(d) and the discussion thereafter, regarding OPR's statutory and regulatory duties under CEQA for the circulation of CEQA documents to "responsible" state agencies.

[314] *Id.*, at [BEL 01535] *See* Exhibit 118.

[315] Telephone conversation on September 10, 1999, between DTSC representatives and the Internal Auditor's team.

[316] OPR previously failed to respond to a similar request from the Joint Legislative Audit Committee. *See* "The Environmental Quality Act and the Belmont Learning Complex: A Breakdown in Process," A Special Report of the Joint Legislative Audit Committee of the California Legislature, March 1999, p. 49.

[317] *Id.*, at [BEL 01255-56] *See* Exhibit 118.

[318] *Id.*, at [BEL 01456] *See* Exhibit 118.

In response, LAUSD provided the following statement of the mitigation monitoring plan that it intended to implement at the Belmont site:

> The detailed plan of managing oil wells and specific techniques to be used to relieve any buildup of reservoir pressure in the field is a part of a development processing phase of the project. The plan will be based on findings of the *Report on Field Operations: Location of Former Oil Wells*, prepared by the Intera's engineers in August 1996. An active well located in the area proposed for a football field could be capped and a gas vent could be drilled (from off Beaudry) to relieve pressure. The mitigation measure in the EIR has been amplified by adding a requirement that the LAUSD and joint venture partners in consultation with the Division (DOGGR) shall prepare a detailed plan for managing any reservoir buildup pressure, including monitoring and well maintenance of some existing wells, new wells or other measures currently being discussed with the Division, will be used at specific locations.[319]

Several detailed questions were raised regarding project alternatives and traffic studies by Trump Wilshire Associates/Ambassador Associates("TWA"), who had entered into litigation with LAUSD on the unrelated Ambassador Hotel site.[320]

E. The Final Environmental Impact Report Process

The Final Environmental Impact Report ("FEIR") incorporated the comments from DOGGR and promised a properly carried out remediation and mitigation plan. With respect to the steps that would be taken on the oil wells the FEIR stated the following:

> **Oil Wells:** The proposed project will result in a beneficial impact by re-abandoning old, and potentially leaking oil wells to current specifications as required by DOGGR and removing soils containing petroleum hydrocarbons that may be uncovered during grading and excavation. The District has prepared a detailed workplan for location of abandoned wells, and will re-abandon all positively identified oil well [sic] according to current DOGGR requirements. The project's design accommodates the access to the Manley Oil company oil well via Colton Street and Edgeware Road. Access easements to other wells which may remain operational will be provided as necessary. To ensure safety, minimum building setbacks and fencing will be provided around active oil wells in accordance with Department of Oil and Gas [sic] guidelines.

---

[319] *Id.*, at [BEL 01457] *See* Exhibit 118.

[320] In 1990, the LAUSD filed a condemnation action to acquire the rear 17 acres of the Ambassador Hotel site for a new high school to serve another attendance area in Los Angeles, not the Belmont attendance area. The owner of the property -- Trump Wilshire Associates ("TWA") -- objected to the acquisition and claimed that it was entitled to over $120 million for the Ambassador site. In 1993 LAUSD filed a Notice of Abandonment in the condemnation action, thereby giving up its efforts to condemn the site. Final Environmental Impact Report dated October 1996 [at BEL 01522] *See* Exhibit 118.

> As previously discussed, the project site lies within a high-potential risk zone for gas seepage. Methane gas can accumulate beneath areas improved with concrete and asphalt surfaces and prevent the natural migration of the methane gas to the atmosphere. If this occurs together with cracks in the concrete or asphalt surface, the gas may migrate into the interior of the overlying building or structure and increase the potential for explosion or fire. To avoid this occurrence, mitigation measures have been required in accordance with the DOGGR recommendations, which would include installing gas detectors, gas migration barriers, or venting systems, if needed.[321]

The FEIR also addressed the presence of underground storage tanks at the Belmont site, and pledged the proper removal of these hazards. The FEIR recognized the human health risk created by these tanks and the LAUSD stated that it would follow the recommendations of sate and local regulatory agencies, including the Regional Water Quality Control Board, the State Department of Health Services and the Los Angeles City Fire Department (DTSC, however, was not mentioned).

> **Underground Storage Tanks (USTs):** Previous site investigations revealed no indications that old storage tanks were equipped with leakage monitoring devices. Therefore, it is possible that leakage may have occurred undetected at any of the USTs locations. Any soils contaminated by leaking USTs will be remedied prior to construction in accordance with existing guidelines of the Regional Water Quality Control Board's *The Leaking Underground Fuel Tank Field Manual* which guides site assessments, cleanup, and UST closure. These activities require coordination with local authorities (i.e., fire and health departments) and the State Department of Health Services. The Los Angeles City Fire Department is the local agency responsible for UST permitting and inspection, and will be contacted with respect to tank removal.
>
> Grading operations will probably release volatile petroleum hydrocarbons in the soils where previous land uses involved underground storage tanks. Site construction workers and passers-by may be exposed to these potential contaminants during excavation. However, existing standard occupational safety measures and containment and management practices implemented in conjunction with UST removal and remediation activities will provide adequate protection.
>
> Overall, the proposed project will have a beneficial effect of remediating existing contamination from previous activities on the site. In accordance with existing federal, state, and City requirements the site will be remediated more rapidly because of the immediate reuse of the site for the proposed Belmont Learning Complex.

---

[321] *Id.*, at [BEL 01360] *See* Exhibit 118.

> The potential for hazards from methane gas seepage and buildout will be reduced to a less than significant level by implementing mitigation measures in accordance with the Division of Oil and Gas [sic] recommendations.[322]

In dividing the duties and responsibilities for implementing the mitigation measures outlined in the FEIR, Ms. Lisa Gooden,[323] as an attorney tasked by the LAUSD General Counsel to work in the Planning and Development Office, prepared and circulated a marked-up copy of the Mitigation Monitoring Plan ("MMP").[324] On October 24, 1996, Elizabeth Harris, Real Estate and Asset Management Branch, informed Ms. Gooden of the following results:

> The near-universal response is that staff believes the responsibility for monitoring the various mitigation measures should fall on the Planning and Development Office, since other District offices have no control over the project, either in its design or its construction. They also have no control over the provisions of the construction contract documents, which in the past and currently seem to be the most effective way of ensuring implementation of most of the mitigation measures.
>
> ***
>
> Your office is responsible for most of the measures. These measures will be conditions of project approval. I have revised the wording of some of the mitigation measures to give you more flexibility in implementation. We are, of course, constrained from substantive revisions by the fact that the wording of most of the mitigation measures has already been approved by staff and counsel, and circulated for public review.
>
> Since most of the mitigation measures are to be implemented during project construction, Mike Scinto and others advise that most of the measures should be written into the construction contract documents. As I understand it, these will be prepared by your office and by O'Melveny & Myers.[325]

As a condition for approval of the FEIR, the LAUSD agreed to certain mitigation measures concerning the removal and closure of underground storage tanks, contaminated soil, and abandonment of oil wells. LAUSD agreed to maintain an oil well for purposes of preventing repressurizing of the oil field; LAUSD also agreed to install a methane barrier, methane gas detectors and venting system. Each and every one of these remediation and mitigation measures of existing environmental conditions at the BLC site was deferred into the future. After construction of the BLC began, the LAUSD Environment Health and Safety Branch undertook to close and remove underground storage tanks, abandon oil wells and remove contaminated soil. However, many mitigation or remediation measures were not undertaken until the BLC site was actually graded. As discussed further in Chapter 13, abandoned oil wells, oil sumps, and unanticipated underground storage tanks, were discovered during the actual grading of the BLC site.

---

[322] *Id.*, at [BEL 01362] *See* Exhibit 118.

[323] Ms. Gooden was a former associate of the O'Melveny & Myers law firm prior to joining the LAUSD in 1996.

[324] Inter-Office Correspondence from Elisabeth Harris, Real Estate and Asset Management Branch to Lisa Gooden, Planning and Development Office, dated October 24, 1996. [IA-27136-137] *See* Exhibit 330.

[325] Inter-Office Correspondence from Elisabeth Harris, Real Estate and Asset Management Branch to Lisa Gooden, Planning and Development Office, dated October 24, 1996. [IA-27136-137] *See* Exhibit 330.

F. LAUSD School Board Approval

On November 18, 1996, the LAUSD School Board conducted a public meeting on the Belmont EIR. Richard Baker and Bruce Manley appeared in person to underscore their concerns with Belmont.[326] At this public hearing David Cartwright was asked by Board member David Tokofsky regarding the Final EIR mitigation measures related to the oil well issues as follows:[327]

> David Cartwright: We don't want to make mistakes, and that's why we're going to try and get as closely as possible -- work as closely as possible with Mr. -- with the D.O.G. [DOGGR] and with Mr. Manley and others who have the professional expertise like Intera, Mr. Spivak, to help us do this correctly.
>
> There are wells -- the technical issue on wells, if we can't close a well, I'm not sure I'm the right person to answer that. I think the technical answer is going to be you can close wells. You don't have like an open well that there's no way to cap, but I'd better let Mr. Baker speak on that as well as answer your question overall as to what his opinion is.
>
> David Tokofsky: So at this point you believe it does not constitute an endangerment to --
>
> Cartwright: My own opinion and, Mr. Niccum, you can certainly respond after Mr. Baker is that this is not even close to being one of the most dangerous sites, and that if you do it properly -- you got to do things properly. When you do it properly, you reduce liabilities, you reduce cost. And these kids, it's their neighborhood. They live there already, and we got to make sure the neighborhood improves.
>
> David Tokofsky: Is that a yes or no, Mr. ----
>
> David Cartwright: That's a yes. Definite yes.

---

[326] Transcript of LAUSD School Board Hearing of November 18, 1996. [BL-06097 – BL-06170] *See* Exhibit 132.
[327] *Id.*, at 72-73.

When Mr. Baker from DOGGR is asked to address the issue of endangerment of public health, he responded, "Well, I can't guarantee you that, okay."[328] He also stated:

> We'll tell you that if you do it the way that we have prescribed over the years that we've been working with these site things that it's as safe as you can get developing in an oil field, and that's as far as we'll warranty it. We make no warranties.[329]

Based on these warnings regarding on-going concerns with development on an oil field, and pledges by LAUSD outside counsel and staff to work with DOGGR, the LAUSD School Board voted to certify the Final Environmental Impact Report (EIR) in compliance with the California Environmental Quality Act, that the Final EIR was presented to Board, that the Board reviewed and considered information contained in the EIR prior to approving the Belmont Learning Complex Project.[330]

---

[328] *Id.*, at 73.

[329] *Id.*, at 75.

[330] Board Report, dated November 4, 1996. [IA-88224 – IA-88227] *See* Exhibit 127.

CHAPTER 13

REMEDIATION, MITIGATION, GRADING AND CONSTRUCTION AT BELMONT

The overall plan for the remediation and mitigation of the Belmont site is contained in the Final EIR that was certified in November 1996 by the LAUSD School Board. The environmental hazards present at the Belmont were created by the fact that it was partly located over the Los Angeles Oil Field; additional hazards were created by known and unknown former automobile service businesses and light industry on the Belmont site. The primary components of the remediation plan centered on locating and abandoning oil wells, and locating and removing underground storage tanks. The LAUSD also contemplated the installation of a methane detection and barrier system.

A. Re-abandonment Of Oil Wells And Replacement Of The Suplin Well

During the CEQA review process for the Belmont project, the LAUSD pledged to implement a remediation program that included the location and re-abandonment of oil wells, and the maintenance of an operating well to prevent repressurizing of the oil field.[331] The LAUSD pledged to cooperate with DOGGR in implementing this remediation plan.

In March 1996, Intera Inc., Environmental Engineering Consultants ("Intera"), prepared a *Workplan for Well Location: Los Angeles Unified School District (LAUSD) New Belmont Junior High School No. 1 Site Location in Los Angeles City Oilfield.*[332] The focus of this work plan was on the 11 acre site "bounded by Temple Street on the north, Boylston Street on the west, Colton Street on the south and Beaudry Avenue on the east." Intera relied on the geophysical survey conducted on August 6 and August 14, 1990, which had identified more than 13 former oil wells, and other possible well locations.[333] The scope of the work covered by Intera's workplan consisted of well location efforts by excavation only.

During August 1996, LAUSD became very active in addressing the issue of oil well location and abandonment. On August 1, 1996, Intera prepared a *Report on Field Operations: Location of Former Oil Wells: Los Angeles Unified School District (LAUSD) Belmont Learning Complex (11 Acre Portion) Site.*[334] On August 5, 1996, Richard Lui sent a letter to Lisa Gooden, Porter Hall, Elizabeth Harris and R. Hobson, approved by Diana Doi, regarding the Belmont Learning

---

[331] Final Environmental Impact Report for the Belmont Learning Complex, dated October 1996 at 2.6-6. [BEL 01360] *See* Exhibit 118.

[332] Workplan for Well Location (report) for the New Belmont Junior High School, prepared by Intera, Inc. for LAUSD. [OMM-0033691-718] *See* Exhibit 107.

[333] *Id.*, at 1-2.

[334] Intera report relocation studies for the former oil wells on the 11-acre site. It located four wells, one of which was abandoned in 1969. [DTSC-00137-269] *See* Exhibit 112.

Complex 11-acre portion, Oil Well Location Report. In this letter Mr. Lui reported the following:

> Four out of thirteen wells on record were identified during field operations witnessed by DOGGR. One of the wells (Tierra Oil #2) is emitting high gas levels and will be abandoned immediately through an amendment of Intera's contract. Nine wells that we were unable to locate, it is anticipated that some of them will be discovered during grading and excavation activities once construction begins.[335]

On August 7, 1996, David Cartwright wrote a memorandum to Board member Vicki Castro regarding the Belmont/Oil field.[336] In his memorandum, Mr. Cartwright advised Ms. Castro that the draft EIR contained several mitigation measures to address the "methane gas issue." The mitigation measures included (1) proper abandonment and capping of old wells, (ii) maintenance of existing wells, if possible, (iii) location of buildings away from wells and (iv) the maintenance of open, unpaved fields. Mr. Cartwright advised Ms. Castro that "[m]ethane gas only becomes a problem when its natural seepage is obstructed or artificially concentrated in an enclosed area." He concluded that the mitigation measures "eliminated any such environmental or safety risk."

On August 15, 1996, Lisa Gooden wrote David Cartwright, Steve Gaffney, Richard Lui, Raymond Rodriguez, Mike Chang, Elizabeth Harris, and Lynn Roberts concerning next steps to be completed regarding the oil wells on the Belmont property, with a desk reference note from Lisa Gooden dated August 22, 1996 to Elizabeth Louargand regarding abandonment of oil wells on the 11-acre portion of the Belmont site.[337] Ms. Gooden reported that Terra Oil #2 well was "leaking unacceptable levels of hydrogen sulphide (a petroleum by-product)" and requested approval of an estimate from Intera to re-cap the well for $50,000.

On August 19, 1996, David Cartwright faxed a draft Memorandum from David Cartwright addressed to Richard Mason, regarding an update on the Los Angeles City Oil field and the Belmont Learning Center. Mr. Cartwright reported that LAUSD hired Intera, Inc. to produce a report and recommendations for resolving all remaining oil field conditions which may impact the Belmont site, like the location of former oil wells and existing well and any gas leaks.[338]

On August 22, 1996, David Cartwright sent Richard Mason a memorandum regarding the oil field issues. The memorandum stated that Intera had conducted field surveys and excavations in cooperation with the County Public Works and DOGGR and reported its discovery and recommendations in an August 1 report. The memorandum added that the LAUSD had conducted both Phase I and Phase II site assessments and an EIR for the 11-acre site in 1990, but a Mitigated Negative Declaration was chosen as the preferred route for the 24-acre site. Mr. Cartwright further noted that during the RFQ/RFP process, he advised the developers on environment/oil issues and "personally conducted" a briefing session. He concluded that no active or abandoned wells are under or near the actual school buildings. The Draft EIR was circulating at the time of the memorandum. Further, Mr. Cartwright wrote that the Belmont Learning Center imposes "substantially fewer potential problems with the oil field then did the Belmont Junior High School, previously approved by the Board for the 11-acre site."[339]

---

[335] Letter from Richard Lui to Lisa Gooden, Porter Hall, Elizabeth Harris [approved by Diana Doi, dated August 5, 1996. [IA-46975-76] *See* Exhibit 113.

[336] Letter from David Cartwright to Vickie Castro, dated August 7, 1996. [OMM-0007339-46] *See* Exhibit 305.

[337] Inter-Office Memorandum from Lisa Gooden to David Cartwright, Steve Gaffney, Richard Lui, Raymond Rodriquez, Mike Chang, Elisabeth Harris, and Lynn Roberts, dated August 15, 1996. [IA-44416-21] *See* Exhibit 307.

[338] Draft Memorandum from David Cartwright addressed to Richard Mason, faxed to Dominic Shambra, dated August 19, 1996. [IA-27356-61] *See* Exhibit 308.

On September 13, 1996, Elizabeth Harris faxed to Richard Lui comments received from DOGGR on the Belmont Learning Complex draft EIR, attaching a memorandum dated September 4, 1996 from Jason Marshall from the from the Department of Conservation's DOGGR to Elizabeth Harris re: Review of DEIR and submittal of comments. Richard Lui then sent an inter-office memorandum from "Richard Lui to Distribution" regarding a final report on field operations: location of former oil wells prepared by Intera, Inc.[340]

The Final EIR was prepared and circulated in October 1996. On October 2, 1996, Allan Spivak of Intera in a letter to R.K. Baker requested permission to abandon well #1A and justified the request by stating that the well only provided "negligible pressure relief" for the reservoir. Also, he noted that no major faults had been mapped near the site and that the reservoir was steeply dipping to the south, which meant that gravity segregation is "active and free gas will migrate to the highest structural points."[341] On November 8, 1996, Richard Lui recommended that Grayson Services be retained to abandon oil wells on the site. The company quoted $112,650 for three wells; however, Lui estimated the location of 15 oil wells during construction. Total funding would amount to $862,650.[342]

Mr. Bruce Manley, the oil field operator, wrote to David Cartwright on November 26, 1996, to reiterate statements regarding natural hydrocarbon seep location problems, and followed up with a list of dozens of locations of seeps in the Los Angeles area.[343] In response to the concerns raised at this public hearing, David Cartwright made specific follow up with DOGGR and held an "all hands" meeting.

On February 4, 1997, Allan Spivak from Intera wrote to DOGGR. Mr. Spivak requested an abandonment and re-drilling procedure for mitigating the well (the so-called "Suplin" well) from

---

[339] Memorandum from David Cartwright to Richard Mason, dated August 22, 1996. [OMM-0007121-28] *See* Exhibit 115.

[340] Fax from Elizabeth Harris to Richard Lui, dated September 13, 1996. [IA-27052-55] *See* Exhibit 117.

[341] Letter from Allan Spivak to Richard Baker, dated October 2, 1996. [OMM-0008227-31] *See* Exhibit 120.

[342] Letter from Richard Lui to Florine Bennett, dated November 8, 1996. [DK-00112-14] *See* Exhibit 129.

[343] Letter from Bruce Manley to David Cartwright, dated November 26, 1996. [BEL-017685-89] *See* Exhibit 133.

DOGGR, which was discussed on February 6 with LAUSD and Manley.[344] Intera preferred to abandon the Suplin well and drill instead a new well along Temple that would slant under the ballfield to approximately 800 feet. Their cost estimate was $198,000, instead of the $70,000 cost for moving the well further into subsurface.[345]

However, the version of this report provided to DOGGR did not contain the recommendations regarding the "Methane Gas Relieve Well Location Investigation." A draft of this report was sent to Richard Mason on February 5, 1997, which contained this provision that concluded that a methane gas venting well was not feasible because it would need to be located upgradient on non-LAUSD property.[346] Allan Spivak agreed that paragraph 3.3, which was included in the report to the school entitled "Methane Gas Relief Well Location Investigation" ***was not included*** in the report to DOGGR. He told the Internal Auditor that he could not recall anything about why that paragraph was omitted, but said that any change in the report would have been as a result of a request by someone at the School District. When asked who it might be, if not Lui, he said if there was anyone else who could have made such a request, he could not recall who it might be.[347] Mr. Lui also does not recall having instructed Intera to have the paragraph removed, and does not who did authorize its removal, if anyone did.[348]

On July 24, 1997, Grayson Service submitted its bid for the drilling of LAUSD #1B well and the replacement well for the Suplin well. On July 28, 1997, Lui requested a not to exceed amount of $450,000 for Grayson's services based on $35,000 per well.[349] On August 12, 1997, Mr. Lui sent a letter to Bob Grayson giving Grayson Service Notice to proceed on the abandonment and redrilling of the Suplin well for $187,340.90. The amount was increased by $28,597.50 in a change order dated October 1, 1997, because of use of an excessive amount of cement due to unknown conditions of the well.[350]

On April 15, 1998, LAUSD's oil well consultants Duke Engineering & Services (formerly Intera, Inc.) prepared a report entitled, *Oil Well Abandonment Report for Belmont Learning Complex (11-Acre Portion).*[351] In this document, Duke Engineering reported on the abandonment of three former oil wells on the 11 acre site. None of the wells were active producers. The abandonment was actually carried out by Grayson Service, Inc. There were a number of wells that were reabandoned under the supervision of DOGGR.[352]

---

[344] Fax from David Cartwright to Lisa Gooden, dated February 7, 1997. [OMM-0008292 - OMM-0008295] *See* Exhibit 146.

[345] Letter from Allan Spivak to DOGGR, dated February 4, 1997. [OMM-0019991-0020001] *See* Exhibit 145.

[346] Letter from Allen Spivak to Richard Mason, dated February 5, 1997. [RM-00058-74] *See* Exhibit 328.

[347] Interview with Allan Spivak, dated July 28, 1999.

[348] Interview with Richard Lui dated May 19, 1999.

[349] Grayson Service submitted its bid for the drilling of LAUSD #1B Well and the replacement Well for LAUSD #1A, dated July 24, 1997. [DK-00115-17] *See* Exhibit 174.

[350] Letter from Richard Lui to Robert Grayson, dated August 12, 1997. [DK-00120-25] and [DK-00126-28] *See* Exhibit 178.

[351] Oil Well Abandonment Report for Belmont Project dated April 15, 1998. [OMM-0033171-95] *See* Exhibit 204.

The replacement well for Suplin well was requested in order to accomplish two goals. First, relocate the active well from the current location because it was situated at second base on the planned baseball field on the 11 acre site. Second, accommodate the request of DOGGR to maintain an active well on the site to relieve pressure. The district completed capping the second-base well and drilling and preparing its replacement, "LAUSD #1B," by November 3, 1997.[353] On July 2, 1998, Richard Lui wrote to request that Richard Baker of DOGGR comment on LAUSD's proposal to cap and monitor the replacement well. Mr. Lui stated "public safety is not being compromised" and also stated the well "will not be cost effective to complete and operate."[354] On August 4, 1998, Mr. Lui wrote to discuss closure of the replacement well. Mr. Lui stated "[I]f an increase in reservoir pressure is detected and your office determines that the well needs to be put on production, the District will immediately install temporary facilities. . . ."[355]On September 3, 1998, Richard Baker of DOGGR responded to Mr. Lui's letter and stated, "[t]he ultimate decision to produce the well for pressure-relief purposes lies with the Los Angeles Unified School District, and according to your recent letter, you stated that public safety is not being compromised through the proposed alternative."[356]

B. Removal Of Underground Tanks And Remediation Of Contaminated Soil

Underground storage tanks ("USTs") used in connection with automobile service businesses were present at several locations at the Belmont site.[357] There were four USTs at the southeast corner of the Belmont site (1st Street and Beaudry Avenue) and two abandoned USTs of unknown size, construction and location near the northwest corner of the Belmont site (near Temple Street and Beaudry Avenue). In addition, there were two USTs located near 1200 Colton Street in the western part of the property.[358] The USTs at the southwest corner presumably include two 4,000-gallon gasoline USTs, one 6,000-gallon UST, and one waste oil UST. Associated soil contamination from these USTs was also reported. Other structures associated with automobile fueling systems (e.g., hydraulic hoists, mechanic areas, and drum storage areas) were also present.

---

[352] Letter from Richard Lui to Rodger Friermuth, dated October 26, 1998. [OMM-0034042-98] *See* Exhibit 284.

[353] *Id.*

[354] Letter from Richard Lui to Richard Baker, dated July 2, 1998. [DOG-01696-98] *See* Exhibit 282.

[355] Letter from Richard Lui to Richard Baker, dated August 4, 1998. [DOG-01699] *See* Exhibit 282.

[356] Letter from Richard Baker to Richard Lui, dated September 3, 1998. [DOG-01700-01] *See* Exhibit 282.

[357] Environmental Testing and Report Review from Richard L. Clark and Daniel T. Elliott of Law/Crandall to Ken Reizes, Temple Beaudry Partners, dated May 29, 1997. [DK-00309-316] *See* Exhibit 269.

[358] Underground Storage Tank Closure Report prepared by A.K.M. Tareque and Al Maurad, El Capitan Environmental Services, Inc. for LAUSD, dated November 1997. [OMM033910-956] *See* Exhibits 187.

1. Tanks At First And Beaudry Avenue

Remedial Management Corporation ("RMC") was retained by LAUSD to remove 4 USTs, a clarifier, and two hydraulic hoists, perform soil sampling and over-excavate hydrocarbon impacted soil at former Lario's Tire Service and Independent Auto Works located at 1101 W. 1st Avenue, Los Angeles, California (northwest corner of 1st Street and Beaudry Avenue).[359] Work was completed by RMC between March 19, 1997 and August 15, 1997.[360] After reviewing the previous investigations conducted at Belmont site by ENV America in March 1994 (ENV America, March 1994, Report of Subsurface Investigation Pacific Rim Plaza Los Angeles, California), RMC conducted additional soil studies at the corner of 1st and Beaudry Avenue.[361] In April 1997, using EPA Method 8020, RMC discovered benzene at 15 feet below ground at concentrations ranging from non-detect to 692 parts per billion. RMC recommended that shoring would be used to buttress the sidewalks at 1st and Beaudry Avenue to excavate contaminated soil.[362]

Following soil excavation and analyses, RMC provided the following relevant conclusions:

- One 6,000 and two 4,000 gallon gasoline USTs and one 280 gallon waste oil UST, and associated piping were removed from the site.
- The USTs and contents were manifested and disposed at appropriate disposal facilities.
- Elevated levels of TPH up to 3,000 ppm detected below the removed USTs, of TRPH up to 6,800 ppm detected below the waste oil tank, and of TRPH up to 4,100 ppm below the easternmost hydraulic lift were excavated based on the results and the previous investigations that defined the vertical and horizontal limits of impacted soil around the USTs.
- RMC conducted air monitoring during excavation and removal activities in accordance with SCAQMD Rule 1166.[363]
- A total of 3,439.75 tons of impacted soil was excavated and recycled at TPS Technologies in Adelanto, California.
- An unknown quantity of contaminated soil was left in place on the south and east wall due to the inability to excavate past the shoring wall. Any contaminated soil not removed during this phase will be removed in a future phase of street widening.

---

[359] Tank Removal Report prepared by Scott R. Fagan, Remedial Management Corporation for LAUSD, dated September 19, 1997. [OMM-0032718-33158] *See* Exhibit 183.

[360] *Id.*, at 1.

[361] *Id.*, at 3.

[362] *Id.*

[363] *See* Exhibit 184.

- A total of 4,646.54 tons (consisting of 2,349.76 of birdseye, 196.71 of base and 1561.00 of recycled material from American Remedial technologies in Lynwood and 539.01 from TPS Technologies in Adelanto) of soil was imported and backfilled at 90% compaction in the cavities.[364]

On January 13, 1998, the Los Angeles City Fire Department determined that no further action was required, based on the submission of RMC's closure report by LAUSD.[365]

By an ironic coincidence, during that very week of January 1998 and continuing into the following week, the District and TBP were extracting over 13,000 gallons of hazardous waste liquid from the very same excavation – an entirely unnecessary exercise costing the District unnecessary expenditures. The reason this situation had developed was because the entire excavation had been re-excavated. The re-excavation was left exposed to winter rains and site run-off, bringing large volumes of water into contact with the contamination that had been allowed to remain pending future construction (*i.e,* the planned street widening). Had proper backfilling initially occurred, or had proper precautions against rainwater infiltration been undertaken, this hazardous liquid waste would not have been generated. Thus, the expense of the hazardous waste disposal, as well as the re-excavation and re-backfilling, were entirely avoidable. In any event, LAUSD (not TBP) paid for this otherwise avoidable expense.[366]

2. Tanks Located At 1200 Colton Street

El Capitan Environmental Services, Inc. ("El Capitan") was retained by Richard Lui, LAUSD Environmental Assessment Coordinator, to remove and document the removal of two 500-gallon diesel USTs from the property located at 1200 Colton Street, Los Angeles, California.[367] The tanks were discovered during grading of the Belmont site. The USTs were excavated and removed from the site on October 22, 1997 under a permit with the Los Angeles City Fire Department (LAFD).

The two 500-gallon USTs, encountered unexpectedly during grading, were removed from the Belmont site. Petroleum hydrocarbon-impacted soils encountered beneath the two former tank locations were removed by excavation and hauled off-site for treatment at Landmark Materials in Irwindale, California, which is a state-permitted facility. Confirmation soil samples, collected after removal of the impacted soil, did not indicate the presence of detectable concentrations of Total Petroleum Hydrocarbons and BTEX.[368] The Los Angeles City Fire Department determined that no further action was required, based on El Capitan's closure report on January 14, 1998.[369]

---

[364] *Id.*, at 8.

[365] Letter from Dennis C. Wilcox, Commander, Environmental Unit, LAFD to Brad Smith, EHSB LAUSD, dated January 13, 1998. [OMM-0032389-32477] *See* Exhibit 194.

[366] The LAUSD claims that TBP approved the initial use of the original backfill material. (Richard Lui telephone statement, dated September 7, 1999). If confirmed, TBP would have been at fault. If so, however, there appears no justification for the LAUSD paying for any related costs or being listed as the generator of the waste.

[367] *Id.*

[368] *Id.*

3. Tanks At Temple And Beaudry Avenues

Although previous environmental investigations identified potential locations for additional underground tanks near Temple and Beaudry Avenues, and near the planned cafeteria and multipurpose building in project Area 3, the Internal Auditor was unable to confirm that any USTs were located or closed in these two areas.[370]

4. Methane Barrier System -- LAUSD's Early Views

Methane gas mitigation is not a new issue at LAUSD. In 1985, following the well-known methane gas explosion in the Fairfax area, the LAUSD instituted a methane gas surveillance program.[371] The LAUSD identified the methane problem as follows: methane is a naturally occurring gas, which is a primary component of natural gas, and is also formed through decomposition of organic compounds. LAUSD identified dump sites and oil fields as the principal producers of methane.[372] Furthermore, in 1985, LAUSD identified the hazards and migration of methane gas as follows:

> Methane is odorless, tasteless and nontoxic. However, in very high concentrations it is classified as a simple asphyxiant. It is explosive when concentrations are between five and fifteen percent by volume in air. Any concentration below five percent is neither explosive nor combustible. Concentrations that exceed fifteen percent are potentially flammable. Methane gas tends to migrate vertically into the atmosphere. When upward movement is stopped the gas will tend to move laterally until it can find a vertical path to the surface.[373]

LAUSD ordered a precautionary check for methane gas at 95 schools which were near oil and natural gas fields, 49 schools that were near landfills, and 37 schools that were near oil drilling sites.[374]

As part of the mitigation monitoring plan for Belmont which was contained in the November 1996 Final EIR, LAUSD personnel and Temple Beaudry Partners identified the need to install a methane barrier system. The 11 acre middle school site at Temple and Beaudry is located on an active oil field. The LAUSD and Temple Beaudry Partners fully anticipated that a methane mitigation system would be required for any enclosed structure located on this property, which was sometimes identified as the property located "north of Colton Avenue." However, the Internal Auditor has found evidence that Temple Beaudry Partners' managing partner, Kajima Urban Development LLC, has made assertions of fact that understated -- and misled public officials -- regarding the methane hazard on the remaining 24 acres of the Belmont site ("south of Colton Avenue"), which are inconsistent with information and advice received from DOGGR as early as 1993. TBP knew of, or should have known of, the information from DOGGER at the time of TBP's misleading statement.[375]

---

[369] Letter from Dennis C. Wilcox, Commander Environmental Unit, LAFD to Richard Lui, LAUSD, dated January 14, 1998. *See* Exhibit 194.

[370] *See* Figure 7 (identifying potential locations of USTs) and 10(identifying project Area 3).

[371] Inter-Office Correspondence from Jack Waldron, Supervisor, Safety Programs to Byron L. Kimball, Director, School Building and Facility Services, dated May 13, 1985. [IA-92159-180] *See* Exhibit 270.

[372] *Id.*

[373] *Id.*

[374] LAUSD Press Release, dated April 26, 1985. *See* Exhibit 271.

5. DOGGR's Contrary Views

On August 2, 1993, Richard Baker, District Deputy of the DOGGR, wrote to Ms. Rosanne McGlohon, Senior Safety Officer, LAUSD EHSB to provide guidance regarding "oil field-related problems" on the 24 acre Shimizu site.[376] In this letter Mr. Baker advised the LAUSD that it should consider methane a pervasive problem throughout the site:[377]

> As mentioned on the previous page, unknown wells may be located on the proposed construction site. Many of the old wells in the field are uncased and impossible to locate, even after final grading is completed. These old, unlocatable and uncased wells could leak oil and gas in the future.
>
> It is our recommendation that all project buildings be protected and vented by the use of plastic sheeting or the "Liquid Boot" system installed between the foundation and the ground surface. A vent system should be installed to conduct any gas accumulation to the atmosphere and away from the buildings.

6. LAUSD's Final EIR On Methane -- Is It Safe?

In November 1996, the Final EIR's mitigation monitoring plan included a plan to install a methane barrier system, gas detection devises and venting systems, ***"if needed."*** This issue became a primary issue raised during the LAUSD School Board public hearing on the issue of certifying the Final EIR in November 18, 1996. Board Members Julie Korenstein and David Tokofsky raised questions regarding the ability of the LAUSD to mitigate the dangers caused by potential explosive levels of methane at Belmont site.[378] Ms. Korenstein posed a pointed question to Mr. Spivak of Intera regarding methane mitigation:

---

[375] *See, e.g.*, Exhibit U to the DDA, "Environmental Investigations". [BEL 016772] (Document not included with this *Report of Findings* due to its extensive length).

[376] Letter from Richard Baker, District Deputy, DOGGR to Ms. Rosanne McGlohon, Senior Safety Officer, LAUSD, EHSB, dated August 2, 1993. [IA-16528-16530] *See* Exhibit 37.

[377] *Id.*

[378] Transcript of LAUSD School Board Hearing of November 18, 1996 at 66. [BL-06097-170] *See* Exhibit 132.

> "You've mentioned before that in order to contain the methane problem that during construction we would have to build in venting and monitoring mechanisms. Once there is monitoring, what happens? What are the steps? A bell goes off? What happens next?"

In response to this safety concern, Mr. Spivak stated:

> "I can't answer all of your questions because I'm not a specialist in construction, but all I can tell you is that the Fairfax area which is highly developed is a lot more methane prone that this particular area, and once they understood the problem, they've managed to live with it."

A meeting was held on November 21, 1996 to discuss the measures needed to address the danger posed by methane gas on Belmont site. The following persons were in attendance at this meeting: Mr. Baker, DOGGR, Mr. Cartwright, LAUSD staff, Mr. Kenneth Reizes, Project Executive at Temple/Beaudry Partners LLC.[379]

7. Temple Beaudry Partners Employs Law-Crandall To Test For Methane

On December 30, 1996, Mr. Reizes wrote to Mr. Shambra to request the LAUSD to authorize additional services from consultants at Law/Crandall to provide eight additional geotechnical borings in the area of the basketball courts, aquatic center, double gym, administration/media gym, cafeteria/multi-purpose building, and the recreational & parks building. The purpose of the test were to determine "underlying conditions below these buildings, and also determine if organic vapors are detected in the soil in these areas."[380] This request was approved by Mr. Shambra on January 7, 1997.[381]

On January 14, 1997, Mr. Shambra approved two additional environmental investigations by consultants at Law/Crandall. In the first approved proposal, Law/Crandall undertook to test the environmental soil conditions at Belmont site, including "70 environmental samples and to test 20 of these for evaluation and comparison to the existing environmental information available for the site."[382] LAUSD approved Law/Crandall's January 3, 1997 proposal to "select 20 samples for chemical analyses based on field screening and visual observations" using EPA method 8015 for diesel and heavy hydrocarbons.[383] Law/Crandall also stated that the purpose of these additional tests was as follows:

---

[379] Letter from David Cartwright to Richard Mason, dated December 3, 1996. [IA-46963-67] *See* Exhibit 311.

[380] Letter, Kenneth J. Reizes, Project Executive, Temple/Beaudry Partners LLC to Dominic Shambra, Director, LAUSD Planning & Development, dated December 30, 1996. [IA-26903] *See* Exhibit 140.

[381] Memorandum, Dominic Shambra, Planning and Development Office to Kenneth J. Reizes, Project Executive, dated January 7, 1997. [DK-00261] *See* Exhibit 285.

[382] Letter, Kenneth J. Reizes, Project Executive, Temple Beaudry Partners, LLC to Dominic Shambra, Director, LAUSD Planning & Development, dated January 6, 1997. [DK-00002-7] *See* Exhibit 142.

> The results of the environmental sampling will be evaluated and compared to the existing environmental data of the onsite soils. We will prepare a brief report summarizing the data collected and our recommendations for additional work if necessary.[384]

Law/Crandall also obtained approval to "review and evaluate the existing Phase I & II environmental reports and provide time for consultation, planning and determination of how to handle the oil bearing soils."[385] Law/Crandall stated that the purpose of the "document review will be to evaluate the work performed at the site with respect to the crude oil hydrocarbons found relative to future site redevelopment concerns."[386] The documents identified for review by Law/Crandall characterized both the 11 acre former junior high school site, and the 24 acre Shimizu site:[387]

(a) Reports covering the 11 are site:
- Report of Phase I Site Assessment, including Phase II Workplan of Belmont Junior High No. 1, dated May 22, 1990 (prepared by ABB Environmental Services, Inc.);
- Phase II Site Investigation Report, dated November 1990 (prepared by ABB Environmental Services, Inc.);

(b) Reports covering the 24 acre Shimizu site:
- Property Transaction Environmental Assessment Report (Phase I), dated November 2, 1988 (prepared by McLaren Environmental.);
- Subsurface Soil Investigation Report (Phase II) dated March 9, 1989, (prepared by McLaren Environmental);
- Report of Subsurface Investigation. Pacific Rim Plaza, Los Angeles, CA, dated March 1994 (prepared by ENV America, Inc.);

(c) Reports covering the entire 35 acre Belmont site:
- Division of Oil and Gas Records;
- Division of Oil and Gas Abandonment Procedures.

---

[383] Letter, Daniel Elliott and James L. Van Beveren to Kenneth J. Reizes regarding Law/Crandall Project 70131-6-0505, dated January 3, 1997, approved by Dominic Shambra on January 14 1997. [DK00270-271] *See* Exhibit 272.

[384] *Id.*

[385] Letter, Kenneth J. Reizes, Project Executive, Temple Beaudry Partners, LLC to Dominic Shambra, Director, LAUSD Planning & Development, dated January 6, 1997. *See* Exhibit 142.

[386] Letter, Daniel Elliott and James L. Van Beveren to Kenneth J. Reizes regarding Law/Crandall Project 70131-6-0505, dated January 3, 1997, approved by Dominic Shambra on January 14 1997. [DK00272-274] *See* Exhibit 273.

[387] *Id.*

The report from Law/Crandall, as a result of this environmental document review and geotechnical review were issued in March 1997.[388] The environmental report on its face is based on incomplete copies of the environmental reports, and reports an incomplete evaluation of the environmental information available at the time of the report's distribution to Temple/Beaudry Partners and the LAUSD.[389]

8. John Sepich's Initial Views On Methane At Belmont

On January 5, 1997, prior to receiving the results of Law/Crandall's review of the environmental documentation, Sepich and Associates provided a proposal to mitigate methane gas on the entire Belmont site.[390] The proposal identified the City of Los Angeles Department of Public Works, the Los Angeles City Fire Department and the State of California Division of Oil and Gas (DOGGR) as having specific requirements for methane work.[391] This proposal recommended "the construction of gas control facilities at the project will include methane vent piping; methane subslab barrier membrane; and possibly electronic gas detection."[392] In order to install these systems under all project buildings, the estimated cost was $2 million.[393]

The comprehensive methane barrier system proposed by Sepich & Associates in January 1997 was not implemented because the developer Temple Beaudry Partners LLC had concluded that methane gas did not create a health or safety issue "south of Colton street" and they rejected the cost estimate.[394] On March 6, 1997, Ken Reizes wrote to Captain Jesse Pasos of the Los Angeles City Fire Department concerning the proposed methane barrier system, and the assumption that methane gas was not present south of Colton Street was communicated to the regulatory agencies, which TBP and LAUSD has identified as one of the key agencies, namely the Los Angeles City Fire Department. Mr. Reizes asked Sepich & Associates to design a gas control system for a specific area north of Colton Avenue, including the proposed field house and storage building next to the track.[395] The reduced area resulted in the lowering of the new estimate to about $37,500.[396]

---

[388] Reports of Law/Crandall to Ken Reizes, Kajima International, dated March 10, 20, and 28, 1997. [OMM-0035096-138] *See* Exhibit 150; [OMM-0035429-61] *See* Exhibit 151; and [IA-53559-61] *See* Exhibit 152.

[389] Report of Law/Crandall to Ken Reizes, Kajima International, dated March 10, 1997. [OMM-035096-138] *See* Exhibit 150.

[390] Letter from John Sepich, Sepich & Associates to Ken Reizes, Kajima International, dated January 5, 1997. [IA-11142-48] *See* Exhibit 141.

[391] *Id.*, at 1. [IA-11142]

[392] *Id.*

[393] *Id.* This proposal is remarkably similar to the estimate provided by Geoscience Analytical, Inc., as part of the ABB Environmental 1990 report on the 11 acre parcel. *See* Exhibit 10.

[394] Interview with John Sepich, dated June 8, 1999.

[395] *Id.*

[396] *Id.*

9. Temple Beaudry Assurances On Methane Based On Law-Crandall's Report

While making initial representations to the Los Angeles City Fire Department on the assumption that there was "no methane south of Colton Street," Mr. Reizes then wrote to Captain Pasos again on June 11, 1997, this time relying on the May 29, 1997 report of Law-Crandall for his conclusive statement that "the potential methane is located north of Colton Street away from all planned school buildings."[397] Law-Crandall's May 29, 1997, did in fact conclude that

> The majority of the site appears to be relatively unaffected (e.g., the shallow soils) as was observed for TPH in our environmental sampling and testing. Based on previous reports by others, the areas with high methane gas levels occur north of Colton Street in the subsurface soils beneath the proposed sports stadium, tennis courts, and baseball field. Methane gas associated with the oil field had not been identified in the subsurface soils south of Colton Street in the areas of the proposed school building, offices, and other associated enclosed structures. Based on previous methane studies by others and LAW's observation and analytical testing of geotechnical soil samples collected from the site, it appears that methane gas does not pose a significant environmental concern in the areas of proposed enclosed structures south of Colton Street.[398]

10. Temple Beaudry Fails To Inform Fire Department Of New Methane Findings

According to Mr. Sepich, the Office of the State Architect, which is now the Division of State Architect, is responsible for the construction of schools; however, they did not have anyone on their staff with any experience in methane gas control systems. According to Mr. Sepich, the State Architect agreed with LAUSD and Temple Beaudry Partners LLC that the methane plans would be submitted to the Los Angeles City Building and Fire Departments for review and approval.[399]

Mr. Sepich stated that after reviewing a previous survey for methane gas, Sepich & Associates developed a proposal for further studies for a gas control system for all of the Belmont buildings to take into account the Los Angeles City Building and Fire Departments' normal concerns regarding methane. These plans were submitted for peer review prior to submission to the Los Angeles City Building Department for governmental review in early 1998.[400]

Mr. Sepich conducted his studies and submitted a report to Mr. Reizes of Temple Beaudry Partners dated March 30, 1998, which detailed the existence of pockets of methane throughout the Belmont site, with volumes measuring up to 20% by volume, more than one-third greater than the upper explosivity limit for methane.[401] However, the Internal Auditor has discovered no evidence indicating that Mr. Reizes or anyone else from Temple Beaudry has ever informed the Los Angeles City Fire Department or DOGGR as to the documented presence of significant concentrations and pervasive findings of methane ***south of Colton Street***.

---

[397] Letter from Kenneth J. Reizes to Captain Jesus S. Pasos dated June 11, 1997. [DK-00398] *See* Exhibit 170.

[398] Law-Crandall Report of May 29, 1999 to Kenneth J. Reizes of Temple Beaudry Partners dated May 29, 1999. [DK-00315] *See* Exhibit 360.

[399] *Id.*

[400] *Id.*

Indeed, only on October 7, 1998, more than six months after confirming his discover of methane south of Colton Street, Mr. Sepich finally wrote to the City of Los Angeles Fire Department, to the attention Andy Gutierrez, not Captain Pasos, concerning Mr. Sepich's proposal for "the Belmont Learning Center's Alternate Equivalent Methane Control and Electronic Gas Detection."[402] Subsequently, Mr. Sepich stated that in December 1998, at his suggestion, the LAUSD made a formal request to the Division of the State Architect's Office to authorize the Los Angles City Fire Department full jurisdiction to review and approve a methane gas control system for Belmont.[403]

According to Mr. Sepich, the membrane barrier recommended for the site (made by Liquid Boot) prevents migration of methane and hydrogen sulfide (as well as other contaminants).[404] He believes the integrity of the barrier would last the life of the project. He has reviewed age acceleration tests which demonstrate that the barrier material is still functional and pliable after 30 years. The company that manufactures the barrier guarantees the product for two years - he said there's no such thing as a 50 year warranty.[405]

11. Excavation And Removal Of Contaminated Soil

LAUSD personnel in the Project Management and Construction Branch and the Environmental Health and Safety Branch anticipated that during construction contaminated soil from unknown abandoned oil wells and from leaking underground storage tanks would be encountered.[406] During the course of construction, Turner/Kajima planned for the removal of soil from the site following grading activities.[407]

On August 21, 1997, Mr. Richard Lui, in an inter-office memorandum approved by Dianne Doi, Deputy Director of the Environmental Health and Safety Branch, informed Rodger Friermuth, Facilities Project Manager, that "environmental assessments have been performed for the entire site in accordance with accepted professional standards of environmental investigation, analysis and engineering."[408] Mr. Lui went on to warn in an apparently contradictory manner that "[d]uring the course of construction, it is possible that environmental problems may be discovered."[409] On August 22, 1997, Kenneth Reizes, Project Executive for Kajima Urban Development LLC, sent Mr. Lui's memorandum regarding the "status of environmental safety" to Mr. Elmond Wan, Project Manager of Turner/Kajima.[410] On September 2, 1997, Rodger Friermuth, designating himself as the LAUSD's "Owner's Representative," sent a letter to Kenneth Reizes of "Kajima International" to state that "the District has complied with the "Due Diligence" requirement to locate and remediate all known environmental hazards."[411]

---

[401] Memorandum from John Sepich of Sepich Associates/Methane Specialists to Ken Reizes of Kajima International re: Belmont Learning Center, completion of methane field monitoring, dated March 30, 1998. *See* Exhibit 202.

[402] Letter from John Sepich of Sepich Associates/Methane Specialists to the City of Los Angeles Fire Department, attention: Andy Gutierrez re: Belmont Learning Center, Alternate Equivalent Methane Control and Electronic Gas Detection, dated October 7, 1998. *See* Exhibit 213.

[403] Interview with John Sepich, dated June 8, 1999.

[404] Interview with John Sepich, dated July 29, 1999.

[405] *Id.*

[406] Inter-Office Correspondence from Richard Lui, Environmental Health and Safety Branch to Rodger Friermuth, Facilities Project Manager, dated August 21, 1997. [DK-00028-29] *See* Exhibit 179.

[407] Internal Auditor Interview with Mark Turner of Turner/Kajima.

After providing notification to state and local agencies,[412] Turner/Kajima began excavation at the Belmont site on September 2, 1997.[413] Immediately after beginning excavation at the Belmont site, on September 3, 1997, Richard Lui of the Environmental Health and Safety Branch received reports of "contaminated soil on Mignonette Street" from Ken Reizes (Kajima Urban)) and Joe Walton (Turner/Kajima).[414] Mr. Lui reported that Law/Crandall took samples from the suspected area for laboratory analysis which yielded the result of 3730 parts per million ("ppm") of total petroleum hydrocarbons ("TPH") and "negligible amounts of volatile organic compounds."[415]

On September 4, 1997, Mr. Lui personally inspected the location with consultants from Grayson Service, Inc., and from this inspection determined that there was no evidence of oil well or oil well-related contamination.[416] Additionally, Mr. Lui reported that Law/Crandall's "organic vapor analyzer" did not detect any organic compounds. On September 10, 1997, Ecology Control Industries ("ECI") "conducted additional investigative work to determine the presence and extent of contamination."[417] ECI took three soil samples from an excavated trench and three soil samples from the excavation stockpile. Mr. Lui reported that one of the samples (using EPA analytical laboratory method 8015M) registered 540 ppm of TPH, but "[a]ccording to Raymond Rodriquez, Planning and Development Office, Scholl Canyon Landfill will accept

---

[408] *Id.*

[409] *Id.*

[410] Letter from Kenneth Reizes, Project Executive, Kajima Urban Development LLC to Elmond Wan, Project Manager, Turner/Kajima, dated August 22, 1997. [DK-00323] *See* Exhibit 274.

[411] Letter from Rodger Friermuth, Owner's Representative to Kenneth Reizes, Project Executive, Kajima International [sic], dated September 2, 1997. [DK-00325] *See* Exhibit 275.

[412] Memorandum from Ken Reizes to LAUSD, Turner/Kajima, MV&P and Psomas, dated September 3, 1997. [DK-00326] *See* Exhibit 276.

[413] Letter from Brian Arthur, Turner/Kajima Project Engineer to Kenneth Reizes, Project Executive, Kajima Urban Development LLC, dated August 29, 1997. [DK-00324] *See* Exhibit 277.

[414] Inter-Office Correspondence from Richard Lui to Rodger Friermuth re Belmont Learning Complex: Report of Soil Contamination on Mignonette Street, dated September 16, 1997. [DK-00327] *See* Exhibit 278.

[415] *Id.*

[416] *Id.*

[417] *Id.*

TPH concentrations up to 1,000 ppm."[418] Mr. Lui recommended that Mr. Friermuth resume normal grading activities and disposal to Scholl Canyon Landfill.[419] This basic plan of dealing with impacted soils continued through the life of the excavation among the Law/Crandall environmental staff, for in their view the contamination on the site was "naturally occurring", and as such, the limits were really not important, because the landfill would take the material anyway.[420]

As part of the excavation work Temple Beaudry Partners arranged for a sub-contract with Law/Crandall for "geotechnical" consulting services. This contract was later expanded to include "environmental" monitoring for LAUSD. During excavation, Law/Crandall maintained a person on-site to monitor for "impacted" soil. The soil was inspected visibly for discoloration, and monitored for any odors. In addition, if impacted soil were detected by sight or odor, a handheld vapor monitor was used to measure for hydrogen sulfide and TPH. If impacted soil was detected, the soil was stockpiled and tested for levels of TPH.[421]

The Internal Auditor's team interviewed Law/Crandall employees, and employees of the construction contractor, Turner/Kajima Joint Venture. The following discussion of excavation procedures is based upon these conversations. Steven Croasdale, who was first assigned the Belmont project a few years ago (1997) when the soccer field (adjacent to Colton Street on the south side) was being excavated.[422] He was taken off of the project for approximately 7 months and returned on September 14, 1998. (He thought he was working for LAUSD and Richard Lui, LAUSD's EHSB representative.) At the time, excavated soil was being stockpiled in the area now comprising the multipurpose building ("MPB").[423] He interacted mostly with the Cal/Ex Engineering foreman, Mario Robles. Hypothetically, he said he had the authority to stop a truck loaded with contaminated soil attempting to leave the site without authorization. He would contact Mr. Robles who contacted Mark Turner of Turner/Kajima Joint Venture, who would resolve the issue. Mr. Croasdale was not able to say how many times this scenario occurred, if ever.[424]

---

[418] *Id.*

[419] *Id.*

[420] Internal Auditor Interviews with Law/Crandall personnel, dated July, 1999.

[421] Internal Auditor Interviews with Law/Crandall personnel, dated July, 1999.

[422] Steve Croasdale began employment with Law Crandall in February 1993 after high school. His duties since have been in well installation, water pump installation, soil removal and underground storage tank ("USGT") removal projects. His education as by on-the-job training and assorted undisclosed "work shop" attendance. He identified his supervisors as being Opjit Ghuman (Resource Manager) and Matt Fraychineaud (Project Geologist). He further identified Mike Hamilton as being the attending soils scientist and field technician on the BLC project site. He defined Law Crandall's BLC team as being: Sandy Britt; Richard Clark, Daniel Elliott, Fraychineaud, Ghuman, and Hamilton. Mr. Britt and Mr. Clark were the project managers prior to Fraychineaud and Ghuman, respectively. Mr. Elliott was an environmental scientist involved with the project mostly in the beginning. Mr. Fraychineaud coordinated field activities and interacted with LAUSD EHS person, Richard Lui. Messrs. Ghuman and Hamilton turned in field notes and interacted with the state Regional Water Quality Control Board ("RWQCB"). Interview with Steven Croasdale, dated July 6, 1999.

[423] Letter from Jerry Haffley of Law/Crandall to Mark Turner of Turner/Kajima re: Recommendations for stockpiling of environmentally impacted soils at the Belmont site, dated September 22, 1998. *See* Exhibit 212.

Mr. Croasdale reported that he used instruments such as the OVM Gastech to perform his duties which were to scrutinize the excavated locations for hydrocarbon vapors and hydrogen sulfide (H_2S) gas. He said he never received a reading for H_2S during the period he was assigned to the BLC site. (He did not know about the earlier complaints (10/96) of the persistent odor of H_2S gas.) Any excavated soil that was obviously discolored or that registered hydrocarbon vapor levels greater than or equal to 25 parts per million (ppm) were transported to a location on the BLC site and stockpiled. He stockpiled as impacted soil anything with a lower explosive limit percent which was greater than or equal to 10%. He said any registered reading of H_2S on his instruments would cause him to recommend shutting down the excavation site. It was his understanding that if a significant environmental issue surfaced, the job would be shut down and the Richard Lui from LAUSD EHSB would be contacted for resolution. Mr. Turner confirms that Richard Lui, Rodger Friermuth and Raymond Rodriquez were contacted whenever impacted soil was encountered.[425]

Mr. Croasdale stated that sometimes the grading crews did not isolate impacted soils while other days he witnessed nothing but discolored or impacted soils. He explained the observation as being due to the fact that naturally occurring crude oil contamination was isolated in veins. Impacted/discolored soils were segregated from contaminated soils - the two were stockpiled in different locations on the site. Impacted/discolored soils being stockpiled were sampled and given to Mr. Britt for laboratory analysis by a company called AETL (American Environmental Testing Lab). At first, soil samples were evaluated for hydrocarbon vapors only;[426] later, samples were evaluated for a number of criteria including heavy metals.[427] Stockpiled soils found to contain hydrocarbon concentrations greater than 1000 ppm were discarded at the Bradley Landfill.[428] While he never saw actual laboratory results, one of his supervisors would inform him as to which stockpiled soils had to be discarded at an approved landfill. Mr. Croasdale assured the Internal Auditor's team that any loads of soil removed to Bradley were manifested properly - he knows because he countersigned the documents before the truck load left the site.[429] He believes the impacted soils were transported to Bradley by a transporter called JCAL. No soil was transported to Scholl Canyon Landfill when he was present as an observer and no impacted soil was transported offsite illegally while he was the observer.

---

[424] *Id.*

[425] Interview with Mark Turner, dated August 30, 1999.

[426] So called 418 testing procedure for the presence of heavy oil contaminants.

[427] In addition to heavy metals analysis, EPA Method 8015 Procedure (concentrations of petroleum constituents benzene, toluene, ethylbenzene, and xylene) was conducted.

[428] Letter from Richard Lui to Opjit Ghuman of Law/Crandall re: permit for the Belmont Project authorizing disposal of crude oil impacted soil at Bradley Land, dated October 20, 1998. *See* Exhibit 215.

Calex used a number of pieces of equipment to excavate the site. Initially, the company was using an excavator which he described as being a large backhoe (with an 8 foot bucket) on wheels. Sometimes clean soil was interspersed with clean soil but the load was treated as being impacted and stockpiled accordingly. When Mr. Croasdale returned in October 1998, Calex was using a 637 earthmover/scraper which moved soils in large quantities.[430] Mr. Croasdale observed that this method was less precise than the excavator and large quantities of impacted soil often escaped from the machine as the soil was removed to another location on site. He didn't complain because he was told the 637 would be used only for a day or two. When he discussed the issue with Mr. Ghuman, he did not seem upset so Mr. Croasdale let the issue die. Mr. Turner reports that this soil was manifested and removed as impacted soil.[431]

Mr. Croasdale also dealt almost daily with Mark Turner (Turner/Kajima Construction site supervisor). Turner appeared to be the construction boss. Once, when he discovered and informed Turner of the existence of higher concentrations of hydrocarbon vapors in some re-compacted soils, Turner directed that no soil could be removed offsite.[432] These materials were stockpiled on the area known to him to be the football field. For the most part, stockpiled impacted soils with hydrocarbon concentrations of 75 ppm were covered both on top and beneath with plastic sheets. Croasdale can remember only one incident when impacted soils weren't covered and this occurred only for a day or two until Calex was able to purchase more plastic.[433]).

Law/Crandall provided a soil risk assessment to the LAUSD, including an opinion that impacted soil could be reused on the site, if a buffer barrier of clean fill were placed above it.[434] Richard Lui corresponded on the issue of "naturally occurring crude oil contaminated soil," but there is no discussion about man made waste.[435] The LAUSD and its consultant Law/Crandall were operating under the assumption that the soil contained only naturally occurring contamination in its dealings with the Regional Water Quality Board.[436] The soil has been characterized by Environmental Strategies Corporation during recent tests under the direction of the LAUSD's safety team, and the DTSC.[437]

---

[429] Letter from Richard Lui to Law/Crandall re: authorizing Law/Crandall to sign manifests or waste acceptance forms required for the removal of soil from the Belmont site, dated October 21, 1998. *See* Exhibit 218.

[430] Letter from Matt Fraychineaud to Yi Hwa Kim, dated February 11, 1999, attaching field notes, including October 18, 1998 [IA-11855]. *See* Exhibit 354.

[431] Interview with Mark Turner, dated August 30, 1999.

[432] Letter from Matt Fraychineaud to Yi Hwa Kim, dated February 11, 1999, attaching field notes, including January 15, 1999 [IA-11874]. *See* Exhibit 354.

[433] *Id.*, field note for September 24, 1998 [IA 11839].

[434] Letter from Anthony Colucci at LAWGIBB Group Member to Opjit Ghuman at Law/Crandall re: Belmont Project soil risk assessment, dated December 9, 1998. *See* Exhibit 225; Letter from Anthony Colucci from Law Engineering and Environmental Services to Dan Elliott of Law/Crandall re: Review of historical analytical and site-specific data for the Belmont site, dated April 20, 1998. *See* Exhibit 205.

[435] Letter from Rodney Nelson of Cal/EPA to Richard Lui re: Onsite placement of naturally occurring crude oil contaminated soil, LAUSD's Belmont Learning Center, dated April 28, 1998.

C. Compliance With Regulatory Permits

1. Air Quality Permit Compliance

The South Coast Air Quality Management District ("SCAQMD") has a specific rule, Rule 1166, pertaining to excavation and handling of soil contaminated with Volatile Organic Compounds ("VOC"), including petroleum hydrocarbons. Persons handling VOC contaminated soil and/or excavating underground storage tanks ("USTs") that store or stored VOC must have an SCAQMD-approved plan to minimize VOC emissions, and the permittee must implement that plan when VOC-contaminated soils are encountered. In addition, persons excavating USTs must monitor for VOC contamination at least once every 15 minutes using SCAQMD specified equipment and protocols. Records of the monitoring must be kept. Rule 1166(c).

The Internal Auditor has determined that some but potentially not all of the contractors responsible for handling VOC-contaminated soil and/or removing USTs containing VOCs had SCAQMD-approved plans.

In at least one situation, where the USTs removed at the 1st and Beaudry location by Remedial Management Corporation ("RMC"), RMC was found to be in violation of Rule 1166 and was fined $800.00 by SCAQMD.

The Internal Auditor, notwithstanding repeated requests to both LAUSD personnel and the outside contractors, has been unable able to locate documentation or appropriate record-keeping for all incidents regarding the handling of VOC-contaminated soils and the excavations of USTs containing VOC excavations. In that 500 tons of contamination-impacted soils were manifested and removed from the Belmont site, it is not within the realm of reasonable doubt that SCAQMD permits and related permit compliance were not required.

Penalties for violations of SCAQMD Rules range from a minimum of $1000 per day of violation regardless of culpability to $10,000 per day for negligent violations, $15,000 per day for careless violations, and even $50,000 per day for intentional violations. Civil injunctive relief as well as criminal enforcement and punishment as a misdemeanor is also available. *See* Health & Safety Code §§42400-42409.

See Exhibit 207; Letter from Rodney Nelson of California EPA to Richard Lui re: On-site placement of naturally occurring crude oil contaminated soil at LAUSD Belmont Learning Center, dated May 27, 1998. *See* Exhibit 208.

[436] Opjit Ghuman of Law/Crandall sent a fax to Richard Lui re: Meeting with Paul Cho of the RWQCB concerning correspondence from LAUSD, dated October 9, 1998. *See* Exhibit 214.

[437] *See* Exhibits Nos. 235, 236, 238-241, 325.

2. California's Porter-Cologne Water Quality Control Law Requirements

Discharges of waste materials that may affect water quality are regulated under California's Porter-Cologne Water Quality Control Law.[438] In the Los Angeles area, this regulation is administered by the Los Angeles Regional Water Quality Control Board through a permit known as a Waste Discharge Requirements ("WDR") permit. LAUSD applied for and received two such WDRs for Belmont, the first dated April 23, 1998, and a second dated October 16, 1998, which was then extended to January 25, 1999. LAUSD's applications stated that the material at issue would be "soil containing crude oil" or "solid inert soils," for amounts of such soils up to 250,000 cubic yards. The WDRs were issued to LAUSD pursuant to the Los Angeles Regional Water Quality Control Board's Order No. 91-93, "General Waste Discharge Requirements for Discharge of Non-Hazardous Contaminated Soils and Other Wastes in Los Angeles River and Santa Clara River Basins, dated June 12, 1991.

Both WDRs set forth similar requirements for the disposal of "non-hazardous" hydrocarbon-contaminated soils on and off the site, and contained specific requirements for the analytical laboratory test methods to be used to determine the hydrocarbon content of the soils, as well as the number of samples to be analyzed, depending on the volumes of contaminated soil encountered. The WDR analytical laboratory specifications varied depending upon the initial assessment of the type of contamination involved, and were as follows:[439]

For gasoline-contaminated soils, all of the following:

(a) Modified EPA laboratory method 8015 for Total Petroleum Hydrocarbons ("TPH") as gasoline (fuel). Maximum concentration of TPH permitted: 100 milligrams per kilogram (mg/kg) of TPH

(b) EPA laboratory method 8020 for benzene, toluene, xylene, and ethyl benzene ("BETX"). The detection limit should be at least as sensitive as 0.05 mg/liter for benzene

(c) Organic lead (DHS Method) if for leaded gasoline or if it is not known for certain that only unleaded gasoline was involved. If the contamination is old, ask for total lead (EPA Method 7420 or 7421); if uncertain ask for both total and organic lead)

For diesel or crude oil-contaminated soils:

(a) Use EPA method 418.1. In the case of diesel, also ask for BTEX results. Maximum concentration of TPH permitted: 1000 (mg/kg) of TPH

---

[438] California Water Code §13000 *et seq.*

[439] Waste Discharge Requirements. [IA-92205 – IA-92208] *See* Exhibit 341.

The number of samples required by the WDRs was a function of the volume of material to be sampled, as follows:[440]

Volume of Soil	Number of Samples
<500 cubic yards	1 sample every 100 cubic yards
500 - 1,000 cubic yards	1 sample every 200 cubic yards
1,001 - 10,000 cubic yards	1 sample every 500 cubic yards
>10,000 cubic yards	1 sample every 1,000 cubic yards.

Monitoring reports were required to be filed under penalty of perjury to confirm that this regimen was followed. Only analytical results of discrete samples were permitted; no compositing of samples was allowed. All analyses had to be done by a laboratory certified by the State of California to perform the specific test in question. And perhaps most importantly, used motor oil could be considered as a source of "non-hazardous" hydrocarbon-contaminated soils unless the motor oil had been certified as non-hazardous. LAUSD filed three separate monitoring reports pursuant to these WDRs.

a. First Waste Discharge Requirements Monitoring Report

The first WDR monitoring report was filed on July 21, 1998, and executed under penalty of perjury by Ms. Diane Doi, Deputy Director of the LAUSD's EHS Branch. The report indicated that a total of 10,780 cubic yards of "soil" (otherwise uncharacterized) were disposed as non-hazardous waste. Ms. Doi reported that sampling on a daily basis was conducted, apparently taking one (1) sample per 1,000 cubic yards, analyzing the contaminated soil by modified EPA method 8015, and reporting the results in mg/kg. The results ranged from 1.3 to 1,228, and included a total of eleven samples. Ms. Doi averaged these results, reported the average as 393.5, and reported that that average to be "in compliance with the maximum 1,000 mg/kg of total petroleum hydrocarbon concentration allowed in Order No. 91-93 …" LAUSD's use of the modified 8015 analytical method suggests that the source material for the contamination was gasoline, in that LAUSD used the required method to test for gasoline. If that was the case, the regulatory limit was 100 mg/kg, not 1,000 mg/kg. In any event, sampling per 1,000 cubic yards required a total of 1 sample every 200 cubic yards or a total of five (5) samples. Apparently as to the material, and certainly as to the required sampling program, Ms. Doi's representation of compliance with the WDR appears to not to be true.[441]

b. Second Waste Discharge Requirements Monitoring Report

The second WDR monitoring report was filed in October of 1998 by Law-Crandall, on behalf of "Temple Beaudry Partners and LAUSD." The report concerns 10,000 cubic yards of "oil-impacted soils" that were then segregated into stockpiles of 2,000 cubic yards, from which two (2) to (4) samples were taken and analyzed by EPA method 418.1, with results ranging from

---

[440] *Id.*

[441] Letter from Ms. Diani Doi to the Los Angeles Regional Water Quality Control Board, dated July 21, 1998. [IA-92209 – IA-92210] *See* Exhibit 342.

13 mg/kg to 2,760 mg/kg, and averaging 596 mg/kg, which is then compared by Law-Crandall to the "1,000 mg/kg requirement." Law-Crandall reports that "Previous analyses on similar soils have demonstrated that these soils are impacted by remnant petroleum crude of an oil field in the Los Angeles area." Law-Crandall's report invokes the crude oil standard of 1,000 mg/kg, and reports an average of the samples taken below that number. However, the sampling requirement for these materials was four (4) samples per 2,000 cubic yards, while Law-Crandall curiously reported a range of samples taken as from 2-4 samples per 2,000 cubic yards.[442]

The third WDR monitoring report was filed on December 29, 1998, again by Law-Crandall on behalf of "Temple Beaudry Partners and LAUSD." The report addresses "oil-impacted soils," wherein 8,000 cubic yards of such soil is stockpiled into one pile, from which four (4) samples are taken and analyzed pursuant to EPA method 418.1. The samples range from 19 mg/kg to 154 mg/kg, which Law-Crandall reports as "well within the 1,000-mg/kg-project requirement. However, the sampling requirement for these materials was one (1) samples per 500 cubic yards, suggesting that Law-Crandall should have taken sixteen (16) samples, not four (4).[443]

D. Internal Auditor's Comments

Environmental consultants are hired because of their environmental engineering or science expertise. Among the most common areas where their activities are questioned involve environmental due diligence. For example, Phase I and II Audits may be rushed because a client's trying to beat an escrow deadline. Clients often believe if rushed audits turn up a clean property, the "innocent purchaser" or "innocent landowner" defense will be available if a problem is later discovered.

Obvious professional negligence includes a consultant's failure to utilize the correct or approved testing methodologies in determining the existence or concentration levels of particular contaminants, or a consultant's failure to detect the presence of some readily recognizable conditions or substances.

In California, the professionalization of this process took a major step forward with the enactment of the California Environmental Quality Assessment Act in 1986.[444] Under this statute, a voluntary system of registration as an Environmental Assessor was created, and a list of such assessors is maintained for public inspection by Cal/EPA. Defining an environmental assessment, this legislation called for a "systematic, documented, periodic, and objective review of the operations and practices, used by any commercial or industrial business or individual whose activities are regulated by the state."[445] The purpose of the environmental assessment was to assist the business entity with California requirements relating to the manufacture and use of toxic substances and the generation and disposal of hazardous wastes. As one commentator defined the expectations of an environmental assessor's role, the assessor makes recommendations in one or more of the following areas:

---

[442] October 1998, letter from Law-Crandall to the Los Angeles Regional Water Quality Control Board. [IA-92211 – IA-92212] *See* Exhibit 343.

[443] Letter from Law-Crandall to the Los Angeles Regional Water Quality Control Board, dated December 29, 1998. [IA-92203 – IA-92204] *See* Exhibit 344.

[444] Cal. H&S Code Section 25570.

[445] Cal. H&S Code Section 25570.2(f).

- Recommendations or specific actions necessary for complying with legal requirements relating (but not limited) to air quality, water quality, emergency preparedness and response, hazard communications, and occupational safety and health
- A qualitative review, or where feasible, a quantitative review, of the risks resulting from occupational, public, or environmental exposure to hazardous substances
- Recommendations or actions for anticipating and minimizing the risks from occupational, public, or environmental exposure to regulated or unregulated hazardous substances (including any potential liability), and any suggested management procedures or practices.[446]

From 1990 forward, the principal treatise guiding California real estate lawyers on environmental issues was **Current Law of California Real Estate**, Second Edition, by Harry D. Miller and Marvin B. Starr (Bancroft-Whitney, 1990)(hereinafter "**Miller & Starr**"), especially §29:35 *et seq.*

Prior to 1993, certain governmental or quasi-governmental financial institutions also established guidelines for experts and approved lists of experts. For example, the Federal Home Loan Bank Board, Fannie Mae, and Freddie Mac each promulgated versions of due diligence. **Environmental Liability in Commercial Property Transactions: Risks & Responsibilities**, The American College of Real Estate Lawyers, (American Bar Association 1994), p. 10 *et seq.*

In March 1993, the American Society of Testing and Materials ("ASTM") adopted standards for commercial site assessments in an effort to define the practices necessary to utilize the "innocent landowner" defense under CERCLA. The ASTM standards consist of two practices: the Transaction Screen Process and the Phase I Site Assessment Process.

The Transaction Screen is designed as an initial level of inquiry, particularly for low risk properties for which the more stringent Phase I Site Assessment Standard would be inappropriate or impractical. The Transaction Screen, which need not be completed by an environmental professional, consists of a checklist of questions asked of the owner and/or operator of the property, a site visit, and a limited records review. The Phase I Site Assessment involves a more detailed level of inquiry, including a records review, site reconnaissance, interviews with key personnel, and a narrative report prepared by an environmental consultant.

If a property is known to be contaminated or if the property has been used for industrial or manufacturing purposes, the ASTM standards require that due diligence begin with a more detailed Phase I Site Assessment. If inquiry begins at the Transaction Screen Process, a Phase I Site Assessment will be necessary only if the results of the Transaction Screen indicate that additional inquiry is needed.

---

[446] **Environmental Compliance in California** (Business & Legal Reports, 1997) at A-29. See also Cal. H&S Code Section 25570.2(f)(1) to (3).

Additionally, professional engineers are self-regulated under a Code of Ethics for Engineers. This code generally lacks the force of law, but it helps define an engineer's ethical reporting obligations. Any firm proposing to provide construction project management services should provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project. Gov. Code §4529.5.

CHAPTER 14

INVESTIGATIONS OF BELMONT BY THE STATE JOINT LEGISLATIVE AUDIT COMMITTEE

The Joint Legislative Audit Committee ("JLAC") is the standing Committee of the Legislature which was Constitutionally created to ensure that any legislative actions taken are performed and implemented consistently with the Legislature's intent. To accomplish this charge the JLAC is empowered to direct the State Auditor to perform financial, compliance, and performance audits of any publicly created entity in the State.

The JLAC held a hearing in June 1998 to hear testimony regarding the unique difficulties confronted by school districts when building public schools in congested urban settings.

The Committee followed with two reports. The second report focused on nine LAUSD sites with toxic concerns. The DTSC responded to the Committee's efforts with a new round of investigations of LAUSD sites.

It was during these JLAC-inspired investigations that the DTSC identified a number of problems at Belmont. The Belmont investigation was conducted in two parts as the site was initially designed as a junior high school on an 11 acre parcel but was subsequently expanded for Belmont project by the addition of 24 acres of a 28 acre parcel.

On March 19, 1999, the JLAC, the Senate Committee on Natural Resources and the Assembly Committee on Environmental Safety and Toxic Materials were jointly convened to hold an investigative hearing on the site selection and environmental issues pertaining to Belmont.[447] This hearing investigated issues that had been identified and outlined in previous JLAC reports.

The following JLAC reports have covered school site selection, acquisition and development issues that are pertinent to the manner in which Belmont was developed:

1. The Environmental Quality Act and Belmont Learning Complex: A Breakdown in Process
2. JLAC 1998 Year End Report: "Restoring Accountability in Government"
3. Partnerships Between Public Schools and Private Developers
4. Design Build in Public School Construction: A Post Hearing Briefing

---

[447] Assemblymember Scott Wildman's Press Release, dated March 18, 1999. [IA-01391-92] *See* Exhibit 279.

5. Toxic School Sites in Los Angeles: Weaknesses In The Site Acquisition Process

6. Acquiring Urban Land for Public School Construction and Related Environmental Concerns

7. Where Has The Money Gone? School Construction in the LA Unified School District

8. Preliminary Report Regarding State Allocation Board Funding of the LA Unified School District's Belmont Learning Complex

9. California's Public Schools -- A Needs Assessment

The basic findings of the JLAC were that:

- The LAUSD was first made aware of the toxic problems at Belmont site as early as 1989;

- The LAUSD failed to "adequately characterize" Belmont despite these known problems;

- The LAUSD may have violated the Education Code by seeking State approval of the Belmont site prior to ensuring "that the wastes have been removed";

- The LAUSD may have violated the Health and Safety Code by failing to contact the DTSC prior to construction when they had "probably cause to believe" the land was contaminated;

- Due to LAUSD's failing to adhere to the Health and Safety Code, the state many "pursue feasible civil and criminal actions against" offending individuals;

- The LAUSD appears to have violated their own CEQA guidelines;

- The LAUSD appears to have failed to satisfy many aspects of the California Code of Regulations that govern the CEQA process.

CHAPTER 15

INVOLVEMENT OF CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL -- 1998 TO PRESENT

In November 1998, the California Department of Toxic Substances Control ("DTSC") conducted a preliminary review of documents associated with the proposed Belmont in Los Angeles and presented its findings in a letter to Assemblyman Scott Wildman dated November 17, 1998 (Appendix A)[448]. Based on their review, the DTSC concluded that the site was not adequately characterized. The DTSC identified carcinogens such as benzene and potentially hazardous conditions from methane accumulation onsite. The DTSC recommended, among other things, a comprehensive site audit, a survey to locate any remaining onsite oil wells, a soil sampling program to characterize the entire site, and a groundwater investigation to assess the nature and extent of contamination.

Concurrent with the DTSC review, the LAUSD initiated an independent internal review of the site conditions, which was prompted by the detection of elevated concentrations of methane in site soils adjacent to several proposed school structures. The LAUSD School Board requested that the LAUSD Safety Team (formed originally to investigate environmental problems at Jefferson Middle School) to lead this independent review.[449] Subsequently, Environmental Strategies Corporation ("ESC") was retained to conduct a third party evaluation on behalf of LAUSD of existing environmental conditions at the site. ESC was also retained to assess the proposed passive methane control system design, and provide recommendations on actions to mitigate potential site related impacts within the proposed school structures. A Remedial Investigation ("RI") Workplan was prepared in close consultation between the LAUSD and the DTSC. The approved RI Workplan was implemented by LAUSD between February 27, 1999, and March 22, 1999.

The LAUSD Safety Team was also directed to assure that DTSC would be provided with sufficient information to complete a full review and assessment of the site. DTSC oversight on the Belmont project was provided pursuant to the terms and conditions of the February 22, 1999,

---

[448] California has a statutory and administrative procedure under which the DTSC may designate real property as either a "hazardous waste property" or a "border zone property." Property designated by the DTSC as within either category is restricted in use unless a written variance is obtained from the DTSC. Health & Safety Code §25232. A determination from the DTSC as to whether the property is a hazardous waste or border zone property must be requested by any owner who (1) has probable cause to believe that a significant disposal of hazardous waste has occurred on or within 2,000 feet of the property, and (2) intends within one year to construct or allow construction for residential, hospital, school or day care uses. Health & Safety Code §25221.

[448] A city or county may also request such a determination.

[449] The Safety Team Consists of Angello Bellomo, Barry Groveman and Tom Soto.

Voluntary Corrective Action Agreement between the LAUSD and the DTSC (Appendix B [Cal-EPA, 1999]).

CHAPTER 16

CONFLICT OF INTEREST ALLEGATIONS

The LAUSD School Board has directed the Internal Auditor to investigate allegations of conflict of interest that have been made against individuals and parties involved in the acquisition and development of the Belmont project. The Internal Auditor is continuing his investigation on allegations that he has determined to warrant further inquiry, and reports on his findings concerning the following allegations. Further findings will be reported on by the Internal Auditor in his second report

A. O'Melveny & Myers And Kajima International -- A Legal Conflict Of Interest?

The Internal Auditor has investigated the allegations that the LAUSD's outside counsel at O'Melveny & Myers LLP had an unlawful conflict of interest under California's Rules of Professional Conduct regulating legal ethics because O'Melveny has and continues to represent Kajima International, the owner of Kajima Urban Development LLC, which is the managing partner of Temple Beaudry Partners LLC, which is the developer of the BLC. Temple Beaudry Partners LLC has been and is currently represented by the Latham & Watkins LLP law firm in matters pertaining to Belmont. Temple Beaudry Partners LLC was selected as the developer with whom LAUSD conducted exclusive negotiations that culminated in the execution of a Disposition and Development Agreement in April 30, 1997. O'Melveny & Myers attorneys, David Cartwright and Lisa Gooden, participated in the developer RFQ/RFP selection process.

The Internal Auditor has confirmed that the conflict of interest was disclosed to Richard Mason, LAUSD General Counsel, orally in the late summer of 1994 and in writing on April 6, 1995, and that Mr. Mason waived the conflict of interest orally.[450] Mr. Cartwright reconfirmed the existence of the conflict to Mr. Mason on September 12, 1995.[451] On October 16, 1995, the General Counsel's decision to waive the conflict of interest was presented to the former LAUSD School Board in closed session. By action of the former School Board, the General Counsel's waiver of the conflict of interest was ratified. The Internal Auditor was unable to determine if and when Mr. Cartwright and Ms. Gooden's conflict was disclosed to all participants of the developer RFQ/RFP evaluation process. The Internal Auditor has confirmed that litigation was initiated against LAUSD by California Partnerships, Inc., a subcontractor of one of the developers not selected for the BLC development. The litigation was brought, in part, for LAUSD's purported failure to disclose Mr. Cartwright and Ms. Gooden's conflict of interest during the RFQ/RFP developer selection process.[452] Richard Mason terminated O'Melveny & Myers' representation of LAUSD in February 1999.[453]

---

[450] California Rules of Professional Conduct prohibit a member from representing two parties whose interests may potentially conflict "without informed written consent of each client." Rule of Professional Conduct 3-310(C).

[451] Letter from David Cartwright to Richard Mason, dated September 12, 1995. [OMM-0004256-63] *See* Exhibit 298.

The Internal Auditor finds that no violation of the California Rules of Professional Conduct was committed by O'Melveny and Myers in this regard.

B. O'Melveny & Myers and Kajima International -- A Financial Conflict of Interest?

1. Factual Background

David Cartwright and Lisa Gooden were, at all times relevant here, a partner and associate employee, respectively, of the O'Melveny law firm. Mr. Cartwright at all times relevant here, was Ms. Gooden's direct supervisor at O'Melveny with regard to work on Belmont. O'Melveny, acting principally through Mr. Cartwright and Ms. Gooden, had previously been counsel of record in the acquisition of the Shimizu property, and Mr. Cartwright had been "involved" by his own testimony in Belmont-related matters since 1988. As a continuation of this overall representation, Mr. Cartwright and Ms. Gooden served as two of six voting members of a team led by Dominic Shambra ("Shambra Evaluation Team") to evaluate and recommend a proposed developer who would then be selected by the School Board to enter into exclusive negotiations to develop the Belmont Learning Complex. In effect, either O'Melveny had two votes, or Mr. Cartwright had two of the six votes, on the Shambra Evaluation Team.

In their roles as members of the Shambra Evaluation Team, Mr. Cartwright and Ms. Gooden were the only attorneys, and they acted in a coordinating/recording capacity to organize their own as well as the evaluations of the other four members of the Shambra Evaluation Team. Temple Beaudry Partners LLC, of whom the Kajima Urban Development LLC (whose corporate parent is Kajima International) was a principal partner, was ultimately selected.

According to Mr. Mason, Mr. Cartwright informed him either in the summer of 1994, the spring of 1995 or the fall of 1995 that Kajima International and/or one or more corporate subsidiaries was a "$10 million dollar client" of the O'Melveny firm over the same period during which Mr. Cartwright had represented LAUSD.

2. Analysis

The Political Reform Act is applicable to Mr. Cartwright and Ms. Gooden at Government Code §87100 as follows:[454]

---

[452] *California Partnerships, Inc. v. Los Angeles Unified School District*, Los Angeles Superior Court, Case No. BC 186665 (amended complaint filed November 12, 1998).

[453] Interview with Richard Mason, June 24, 1999.

[454] In addition, "designated employees" that may include consultants of "school districts" are also subject to the various reporting and conflict of interest rules. *See* Government Code §§82019, 82041.

> No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

The initial question, then, is Mr. Cartwright a public official? The implementation of the Political Reform Act is through the regulations set forth in Title 2 of the Code of Regulations ("CCR") 18700 *et seq*. There one finds that 2 CCR §18702.2 is applicable as to the question of whether Mr. Cartwright's participation and voting status on the Shambra Evaluation Team constituted a role sufficient to "participate in making a governmental decision."

> A public official "participates in making a governmental decision," except as provided in Title 2, California Code of Regulations, section 18702.4, when, acting within the authority of his or her position, the official:
>
> (a) Negotiates, without significant substantive review, with a governmental entity or private person regarding a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A);
>
> (b) Advises or makes recommendations to the decisionmaker either directly or without significant intervening substantive review, by:
>
> (1) Conducting research or making any investigation which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A); or
>
> (2) Preparing or presenting any report, analysis, or opinion, orally, or in writing, which requires the exercise of judgment on the part of the official and the purpose of which is to influence a governmental decision referenced in Title 2, California Code of Regulations, section 18701(a)(2)(A).

In reviewing this regulation in light of documents and interview testimony available to the Internal Auditor, subsection (b) on both parts (1) and (2) appear to be implicated by Mr. Cartwright's activities on the Shambra Evaluation Team, for the evidence suggests he was participating in a government decision."

Having established probable cause to find Mr. Cartwright was a public official (as a consultant) participating in a government decision, the question then arises as to whether that public official has a financial interest in that decision.

Government Code §87103 specifies that an official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

> (c) Any source of income, other than gifts and other than loans by commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars ($250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.[455]

Mr. Cartwright is a partner in O'Melveny firm. Kajima, in its various corporate entities, is a client of the O'Melveny firm. Thus if the O'Melveny firm generates income to Mr. Cartwright as his share of the firm's profits in excess of $250 in the 12 months prior to his participation and vote in as a member of the Shambra evaluation team, he had a potentially disqualifying economic interest as described in Government Code §87103 when Kajima was under consideration to be selected as the exclusive negotiating partner with the LAUSD.

The question then becomes, was the economic relationship of O'Melveny to Kajima sufficiently large as to trigger Government Code §87103. A further regulation, 2 CCR §18702.1(a)(1), is applicable where a source of income to an official is directly before the official's agency as a subject of the decision. There the regulation provides that the effect of the decision is deemed material and disqualification would be required.[456]

Here, however, O'Melveny is not directly before the LAUSD; rather, its client Kajima, a source of O'Melveny income is directly before the LAUSD seeking a contract from LAUSD. In that situation, the question then becomes, was the effect of a decision in which Mr. Cartwright participated "material" as to a business entity in which Mr. Cartwright has an indirect economic interest sufficient to trigger disqualification under Government Code §87103.[457]

The regulations provide guidance on this matter. Where the source of income is indirect, 2 CCR §18704.1(b) directs one to 2 CCR §18705. This latter regulation provides that 2 CCR §18705.3 is applicable to government decisions which affect interests in sources of income. That regulation provides as follows:

> 18705.3. Materiality Standard: Economic Interests in Persons Who Are Sources of Income
>
> (a) Directly involved sources of income. Any reasonably foreseeable financial effect on a person who is a source of income to a public official, and who is directly involved in a decision before the official's agency, is deemed material.
>
> (b) Indirectly involved sources of income.

---

[455] Government Code §87103(c).

[456] *Kirchmann v. Lake Elsinore Unified School District*, 57 Cal.App.4th 595 (1997)

[457] *People v. Honig*, 48 Cal.App.4th 289 (1996); see also *Metropolitan Water District of Southern California v. Fair Political Practices Commission*, 73 Cal.App.3d 650, 658 (1977).

(1) Sources of income which are business entities. If the source of income, is a business entity, apply the materiality standards stated in Title 2, California Code of Regulations, section 18705.1(b).

Here, Mr. Cartwright would be governed by 2 CCR 18705.3(b)(1), for Kajima is a source of income to O'Melveny, and hence an indirect source of income to Mr. Cartwright). Following this regulation's direction, we turn to 2 CCR 18705.1(b), which provides as follows:

2 CCR 18705.1
(a) ...

(b) Indirectly involved business entities. The effect of a decision is material as to a business entity in which an official has an economic interest if any of the following applies:

(1) For any business entity listed on the New York Stock Exchange or the American Stock Exchange:

(A) The decision will result in an increase or decrease to the gross revenues for a fiscal year of $ 250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 1,000 largest U.S. corporations, in which case the increase or decrease in gross revenues must be $1,000,000 or more; or

(B) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of $ 100,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 1,000 largest U.S. corporations, in which case the increase or decrease in expenses must be $250,000 or more; or

(C) The decision will result in an increase or decrease in the value of assets or liabilities of $ 250,000 or more, except in the case of any business entity listed in the most recently published Fortune Magazine Directory of the 1,000 largest U.S. corporations, in which case the increase or decrease in assets or liabilities must be $1,000,000 or more.

(2) For any business entity listed on the National Association of Securities Dealers National Market List (securities of companies on this over-the-counter market list are registered with and subject to the Security and Exchange Commission's rule requiring tape reporting of last sale information [17 CFR section 240.77 Aa3-1]):

(A) The decision will result in an increase or decrease in the gross revenues for a fiscal year of $ 150,000 or more; or

(B) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of $ 50,000 or more; or

(C) The decision will result in an increase or decrease in the value of assets or liabilities of $ 150,000 or more.

(3) For any business entity not covered by subdivisions (b)(1) or (b)(2) but which is listed on the Pacific Stock Exchange or is qualified for public sale in this state and is listed on the Eligible Securities List maintained by the California Department of Corporations (which applies to partnerships and other business entities as well as corporations):

(A) The decision will result in an increase or decrease in the gross revenues for a fiscal year of $ 30,000 or more; or

(B) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of $ 7,500 or more; or (C) The decision will result in an increase or decrease in the value of assets or liabilities of $ 30,000 or more.

(4) For any business entity not covered by subdivision (b)(1) which meets the financial standards for listing on the most recently published Fortune Magazine Directory of the 1,000 largest U. S. corporations, the tests in subdivision (b)(1) applicable to non-Fortune 1,000 business entities listed on the New York or American Stock Exchanges may be applied.

(5) For any business entity not covered by subdivisions (b)(1) or (b)(2) which meets the financial standards for listing on the New York Stock Exchange, the tests in subdivision (b)(2) may be applied. The standards are as follows:

The business entity has net tangible assets of at least $ 18,000,000 and had pre-tax income for the last fiscal year of at least $ 2,500,000.

(6) For any business entity not covered by subdivisions (b)(1) or (b)(2) which meets the financial standards for listing on the National Association of Securities Dealers National Market List, the tests in subdivision (b)(3) may be applied. The standards are as follows: The business entity has net tangible assets of at least $ 4,000,000, and had pre-tax income for the last fiscal year of at least $ 750,000, with net income from that period of at least $ 400,000.

(7) For any business entity not covered by subdivisions (b)(1) through (b)(6), inclusive:

(A) The decision will result in an increase or decrease in the gross revenues for a fiscal year of $ 10,000 or more; or

(B) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of $ 2,500 or more; or

(C) The decision will result in an increase or decrease in the value of assets or liabilities of $ 10,000 or more.

Applying the highest standard to Kajima (where the parent company is listed in Tokyo and London, and a subsidiary is listed on the American NASDAQ exchange), the financial limits would appear to be exceeded, making Kajima material as an indirect source of O'Melveny and thus Mr. Cartwright's income, in that the impact of the $87 million Belmont development deal would result in all likelihood in more than $250,000 increased gross revenue to Kajima, and in turn, more than $250 in income to Mr. Cartwright. Ultimately, the matter is subject to a case-by-case analysis,[458] and may focus not only on these issues but also on facts not presently available to the Internal Auditor (*i.e.*, Mr. Cartwright's own ownership interest in the O'Melveny firm at the time relevant to this matter).[459]

3. Internal Auditor's Finding

The Internal Auditor has probable cause to believe that Mr. Cartwright knew or should have known that he was making a decision of material financial interest to himself and to Kajima by casting his vote (and indirectly the vote of Ms. Gooden) as part of the Shambra Evaluation Team to select Temple Beaudry Partners LLC, knowing that Kajima Urban Development LLC (whose corporate parent is Kajima International) was a principal partner of Temple Beaudry Partners LLC. The Internal Auditor is of the view that the O'Melveny law firm should have directed Mr. Cartwright and Ms. Gooden to recuse themselves from any decision-making role on the Shambra Evaluation Team upon their initial discovery of Kajima interest in Belmont's development,[460] and that Mr. Cartwright and Ms. Gooden should have individually recused themselves from a decision-making role on the Shambra Evaluation Team in order to avoid the clear appearance and potential reality of a violation of the Political Reform Act of 1974, Government Code §81000 *et seq.*

---

[458] 60 Ops.Atty.Gen. 307 (July 29, 1977).

[459] *See* Government Code §82030 and *Hays v. Woods*, 25 C.3d 772 (1979)

[460] Mr. Cartwright apparently did not follow correctly the intake procedures of the O'Melveny firm when on September 21, 1995, he opened a new billing matter number for the Belmont Learning Center Plan and DDA [Development and Disposition Agreement]" with Temple Beaudry Partners LLC, in that he listed "Kajima International" as a "client party" instead of an "adverse party" on the O'Melveny intake form, in a matter which Mr. Cartwright listed was valued at "$140,000,000." Exhibit 361. In any event, Mr. Cartwright was unable to produce to the Internal Auditor any record of the conflicts report he received from the O'Melveny firm with regard to why and how conflicts were identified for purposes of evaluating any issue of compliance with legal ethics and applicable conflict of interest laws.

C. Vasquez Architect Firm

The Internal Auditor has investigated the allegation that the architectural firm of McLarand, Vasquez & Partners, Inc. had and continues to have an impermissible conflict of interest by serving as the architect for the development team of Temple Beaudry Partners LLC, after participating in the developer selection process as a consultant to the LAUSD.

The Internal Auditor has confirmed that Ernesto Vasquez did serve as a consultant to the LAUSD during the period of time in which the developer was selected. On January 25, 1995, Dominic Shambra sent Mr. Vasquez a letter discharging him from any further obligation to the LAUSD and permitting him to work with any development team that had submitted pending proposals before the LAUSD's developer selection team.[461] Mr. Vasquez's firm signed either before or after receipt of that letter an exclusive agreement to provide design services to Temple Beaudry Partners LLC, and prior to that development team being selected.

The architectural contract for the Belmont project is a three party agreement among Temple Beaudry Partners LLC, LAUSD and McLaren Vasquez & Partners, Inc.[462] In a letter dated, October 16, 1998, Mr. Cartwright opined that this contract is in full compliance with the Education Code and Title 24 of the California Code of Regulations, because the architect's contract is with Temple Beaudry Partners LLC, not the construction contractor. The construction contractor is a joint venture between Turner Construction and Kajima Construction Services, Turner/Kajima Joint Venture.[463] Mr. Cartwright also notes that the Division of the State Architect has approved of the contractual arrangement among the three parties.[464]

The Internal Auditor has insufficient information at this time to state a finding in this matter.

---

[461] Letter from Dominic Shambra to Ernesto Vasquez, dated January 25, 1995. [OMM-0003527] *See* Exhibit 340.

[462] Letter from David Cartwright to Gary Ness, Assistant Chief Counsel, California Department of General Services, dated October 16, 1998. [OMM-0012565-0012593] (attached to letter from David Cartwright to Richard Mason, dated December 10, 1998). [OMM-0012522-93] *See* Exhibit 353.

[463] *Id.*

[464] *Id.*, at page 4.

CHAPTER 17

OTHER SIGNIFICANT INTERESTED PARTY

A. Hotel And Restaurant Workers Union Local 11 Of Los Angeles' Opposition To Belmont's Developer Partner: Kajima Urban Development LLC

During this investigation, the Internal Auditor interviewed Mr. David Koff, who is a researcher for the Hotel and Restaurant Workers Union Local 11 of Los Angeles ("Local 11"). During these meetings, Mr. Koff was in possession of copies of internal LAUSD memorandum and documents, and Mr. Koff voluntarily provided copies of those documents to the Internal Auditor. Mr. Koff would not name the person or office from whom he obtained these documents. The Internal Auditor has no reason to question the authenticity of the documents produced by Mr. Koff.

Mr. Koff confirmed that Local 11 has a long-running labor dispute with Kajima International, which is the parent company of Kajima Urban Development, LLC ("Kajima Urban"). Kajima Urban is the managing partner of the Temple Beaudry Partners who are currently constructing Belmont in accordance with the terms of the Disposition and Development Agreement, executed on April 30, 1997.

CHAPTER 18

ANALYSIS OF THE FACTS AND LAW ON BELMONT ENVIRONMENTAL ISSUES

A. Education Code §17213

In light of the history of the Park Avenue School situation and the resulting enactment of SB 2262, LAUSD was on notice as of January 1, 1991, concerning the bright line requirement of Education Code §17213 with regard to the purchase of both the eleven acre parcel and the 24 acre parcel that collectively make up the current Belmont Learning Complex site.

As noted in the previous section, Education Code §17213 (which became operative in 1998) was originally codified as Education Code §39003. Section 39003 and 17213 are substantively the same, amended only as noted above by AB 928 in 1991. The language of Education Code §17213 is as follows:

> The governing board of a school district shall not approve a project involving the acquisition of a school site by a school district unless all of the following occur:
>
> (a) The lead agency, as defined in Section 21067 of the Public Resources Code, determines that the property purchased or to be built upon is not any of the following: (1) The site of a current or former hazardous waste disposal site or solid waste disposal site unless, if the site was a former solid waste disposal site, the governing board of the school district concludes that the wastes have been removed. (2) A hazardous substance release site identified by the State Department of Health Services in a current list adopted pursuant to Section 25356 for removal or remedial action pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code. (3) A site which contains one or more pipelines, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, unless the pipeline is a natural gas line which is used only to supply natural gas to that school or neighborhood.
>
> (b) The lead agency, as defined in Section 21067 of the Public Resources Code, preparing the environmental impact report or negative declaration has consulted with the administering agency in which the proposed schools site is located and with any air pollution control district or air quality management district having jurisdiction in the area, to identify facilities within one-fourth of a mile of the proposed school site which might reasonably be anticipated to emit hazardous air emissions, or to handle hazardous or acutely hazardous materials, substances, or waste. The lead agency shall include a list of the locations for which information is sought.

(c) The governing board of the school district makes one of the following written findings: (1) Consultation identified none of the facilities specified in subdivision (b). (2) The facilities specified in subdivision (b) exist, but one of the following conditions applies: (A) The health risks from the facilities do not and will not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the school. (B) The governing board finds that corrective measures required under an existing order by another jurisdiction which has jurisdiction over the facilities will, before the school is occupied, result in the mitigation of all chronic or accidental hazardous air emissions to levels that do not constitute an actual or potential endangerment of public health to persons who would attend or be employed at the proposed school. If the governing board makes this finding, the governing board shall also make a subsequent finding, prior to the occupancy of the school, that the emissions have been mitigated to these levels.

(d) As used in this section: (1) "Hazardous air emissions" means emissions into the ambient air of air contaminants which have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code. (2) "Hazardous substance" means any substance defined in Section 25316 of the Health and Safety Code. (3) "Acutely hazardous material" means any material defined pursuant to subdivision (a) of Section 25532 of the Health and Safety Code. (4) "Hazardous waste" means any waste defined in Section 25117 of the Health and Safety Code. (5) "Hazardous waste disposal site" means any site defined in Section 25114 of the Health and Safety Code." (6) "Administering agency" means any agency designated pursuant to Section 25502 of the Health and Safety Code. (7) "Handle" means handle as defined in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(Added by Stats.1996, c. 277 (S.B.1562), §3, operative Jan. 1, 1998.) (Subject matter from 39003 added by Stats. 1990, c. 1602 (S.B.2262), §1. Amended by Stats.1991, c. 1183 (A.B.928), §1.)(emphasis added).[465]

---

[465] Whether due to the recodification or errant redrafting of the various code sections, "Acutely hazardous material" is not now defined subdivision (a) of Section 25532 of the Health and Safety Code. *See* **California Environmental Laws Annotated**, by John Dwyer and Marika F. Bergsund (West 1999) (hereinafter **Dwyer and Bergsund**), at p. 646.

B. Is The Belmont Situation "Hazardous Waste"?

If the properties that now make up the Belmont Learning Center, separately or certainly collectively, constitute the "site of a current or former hazardous waste disposal site," or if they contain prohibited "pipelines," then the LAUSD School Board violated Education Code §17213. This provision is a "bright line" requirement as to "a current or former hazardous waste disposal site" or a "pipeline" -- the statute simply permits ***no*** exceptions.[466] In short, to proceed with a project on a "site of a current or former hazardous waste disposal site" or one that contains a pipeline, situated underground or aboveground, which carries hazardous substances, acutely hazardous materials, or hazardous wastes, is a clear and straightforward violation of the law.

These types of matters, however, are never simple. The question of whether Belmont is a "site of a current or former hazardous waste disposal site" turns on the application of several definitions in this law and their application to the facts at Belmont. First, what is "hazardous waste?" Second, what is a "hazardous waste disposal site?" Third, is the Belmont site a "site of a current or former hazardous waste disposal site?" Examining these three questions in turn provides a clear road map to the application of Education §17213 to the Belmont Learning Center. Fortunately for the analysis, Education Code §17213 specifically defines the first two terms.

C. What Is "Hazardous Waste" Under California Law?

At Education Code §17213(d)(4), "hazardous waste" is given the same definition as "hazardous waste" is given by the California Hazardous Waste Control Law ("HWCL") at Health & Safety Code §25117. HWCL defined "hazardous waste" from its enactment in 1972 to its being significantly amended in 1995 as follows:

> (a) "Hazardous waste" means either of the following: (1) A waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may either: (A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness. (B) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed. (2) A waste which meets any of the criteria for the identification of a hazardous waste adopted by the department pursuant to Section 25141. (b) "Hazardous waste" includes, but is not limited to RCRA hazardous waste. (c) Unless expressly provided otherwise, the term "hazardous waste" shall be understood to also include extremely hazardous waste and acutely hazardous waste. (Added by State. 1972, c. 1236; amended by Stats. 1977, c.1039)

For purposes, then, of the Belmont site acquisitions through 1994, this definition of "hazardous waste" was controlling.

---

[466] By contrast, Education Code §17213(a)(1) permits a school board to proceed with a project if the ***solid wastes*** are removed. No similar exemption applies to ***hazardous wastes***.

In the classic manner of environmental statutes, from 1972 to 1995, the HWCL defined "hazardous waste" in terms of both its scientific characteristics as well as its impact on public health and safety.[467] The HWCL was amended in 1977 to reflect the passage in 1976 of the federal law regulating hazardous waste, the Resource Conservation and Recovery Act or RCRA.[468]

RCRA was modeled in large part on the HWCL. Indeed, in deference to strong state laws such as the HWCL, the federal RCRA program permits states to regulate hazardous waste in a manner that is more stringent or more extensive than is required under this federal law.[469] In addition to RCRA-determined hazardous wastes,[470] HWCL also regulates a waste as "hazardous" principally on its hazardous characteristics: if it is either ignitable,[471] corrosive,[472] reactive,[473] or toxic,[474] then the waste is a "hazardous waste" under the HWCL. To illustrate the contrast with RCRA, for example, certain crude oil materials that are exempt under RCRA are regulated under the HWCL.[475] Specifically, "drilling fluids," "drilling muds," "oil and water," and "waste (or slop) oil," are specifically "presumed to be hazardous wastes unless it is determined that the waste is not a hazardous waste pursuant to the procedures set forth in [22 CCR] section 66262.11."[476]

---

[467] This approach to defining "hazardous waste" was found both to provide fair notice and constitutional due process in criminal enforcement actions. *People v. Martin*, 211 Cal.App.3d 699, 706 (1989).

[468] This federal law is often called by its acronym "RCRA", and may be found in Title 42 of the Untied States Code ("U.S.C.") at sections 6901-6992k. The HWCL was also amended in minor ways again in 1982, 1988 and 1989. *See* **Dwyer and Bergsund**, at p. 305.

[469] *See* 42 U.S.C. §6929; 40 Code of Federal Regulations ("CFR") §271.1(i)(1). California Health & Safety Code §25159.5(b) expressly adopts the RCRA hazardous waste regulations, "except that any state statute or regulation which is more stringent or more extensive than a federal regulation shall supersede the federal regulation." *See People v. Sangani*, 22 Cal.App.4th 1120, 1130 (1994); *accord*, *Acme Fill Corp. Reilly*, 735 F.Supp. 353, 355 (N.D.Cal. 1990); *Liquid Chemical Corp. v. Department of Health Services*, 227 Cal.App.3d 1682, 1693 (1991); *People v. Martin*, 211 Cal.App.3d at 708.

[470] Health and Safety Code §25117(b).

[471] 22 CCR §22261.21.

[472] 22 CCR §66261.22.

[473] 22 CCR §66261.23.

[474] 22 CCR §66261.24.

[475] *See* "Resource Conservation and Recovery (RCRA) Regulatory Determination for Oil and Gas and Geothermal Exploration, Development and Production Wastes, 53 Federal Register 25446 (July 6, 1988) and "Clarification of the Regulatory Determination for Wastes from the Exploration, Development and Production of Crude Oil, Natural Gas and Geothermal Energy," 59 Federal Register 15284 (March 22, 1993). *See also* 40 CFR Part 261 and Section 3001(b)(2)(A) of RCRA.

[476] 22 CCR §66261.126, Appendix X(b). The duty to make this determination is placed squarely on the generator of the hazardous waste, who is defined as "any person, by site, whose act or process produces hazardous waste identified or listed in chapter 11 of this division or

D. **"Hazardous Substances" Versus Hazardous Waste"**

In addition to RCRA, which regulated hazardous ***waste***, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA" or the federal "Superfund" law) also regulated hazardous ***substances*** that were released into the environment.[477] CERCLA became the "most important piece of legislation governing the relationship between hazardous substances and real property" throughout the 1980s and 1990s in making land owners clean up releases of hazardous substances that had become hazardous waste.[478] While RCRA excluded only certain crude oil materials and expressly regulated petroleum fuels stored in underground storage tanks, CERCLA contains a broad exclusion for petroleum, including fuels that contain hazardous substances such as benzene and lead.[479] In 1981 California adopted its own state Superfund statute in the Carpenter-Presley-Tanner Hazardous Substance Account Act, which is codified at Health & Safety Code §25300 *et seq.*

At the beginning of the 1990s through 1995, then, federal and state environmental law created a complex regulatory regime where CERCLA did not regulate petroleum as a hazardous substance, but RCRA did regulate certain aspects of petroleum as a hazardous waste, and the HWCL regulated yet an even broader array of petroleum materials as hazardous wastes than did any comparable federal law.[480]

---

whose act first causes a hazardous waste to become subject to regulation." *See* 22 CCR §66260.10. In addition, drilling mud from drilling gas and oil wells is a hazardous waste that may be handled as a "special" waste under the HWCL. *See* 22 CCR §§66261.120, 66261.122, 66261.124, and 66261.126, read collectively, these sections lay out how hazardous wastes may be classified and managed as "special wastes."

[477] 42 U.S.C. §§9601 *et seq.*

[478] Quotation from **Current Law of California Real Estate**, Second Edition, by Harry D. Miller and Marvin B. Starr (Bancroft-Whitney, 1990)(hereinafter "**Miller & Starr**"), §29:58, p. 179.

[479] *See* 42 U.S.C. 9601(14); *see also Wilshire Westwood Associates v. Atlantic Richfield Corp.*, 881 F.2d 801, 803-804 (9th Cir. 1989).

[480] The California environmental and real estate/real property bars took note of this complexity, and through the Continuing Education of the Bar programs in 1989 and 1990, these distinctions were emphasized in continuing legal education presentations and coursebook materials, as well as environmental and real estate treatises used extensively by practitioners. For example, "Some materials may be treated as hazardous under some laws but not others. For example, petroleum is excluded from the definition of hazardous substance for purposes of CERCLA and California Superfund, but is regulated under RCRA, HWCL and other laws." "Hazardous Waste Issues in Real Property Transactions," Donald C. Nanney, as published in "Hazardous Waste and Real Property Transactions," Continuing Education of the Bar and the State Bar Real Property Law Section, 1990, p. 110. *See also* "Recent Developments Regarding Hazardous Substance Disclosure Obligations of Lessees, Lessors, and Sellers of Real Property," by G. Oppenheimer and Donald C. Nanney, as published in "Supplemental Program Materials: Fundamentals of Real Property Practice," California Continuing Education of the Bar (1989); "Federal and California Hazardous Waste Laws: Recent Developments Affecting Real Property

In order to better conform with RCRA, the Hazardous Waste Control Law was overhauled in 1995, and redefined "hazardous waste" in the process as follows:

> (a) Except as provided in subdivision (d), "hazardous waste" means a waste that meets any of the criteria for the identification of a hazardous waste adopted by the department pursuant to Section 25141 (b) "Hazardous waste" includes, but is not limited to, RCRA hazardous waste. (c) Unless expressly provided otherwise, "hazardous waste" also includes extremely hazardous waste and acutely hazardous waste. (d) Notwithstanding subdivision (a), in any criminal or civil prosecution brought by a city or district attorney or the Attorney General for violation of this chapter, when it is an element of proof that the person knew or reasonably should have known of the violation, or violated the chapter willfully or with reckless disregard for the risk, or acted intentionally or negligently, the element of proof that the waste is hazardous waste may be satisfied by demonstrating that the waste exhibited the characteristics set forth in subdivision (b) of Section 25141.[481]

For purposes of the 1996-1999 development of the Belmont property, this latter definition of "hazardous waste" was controlling.[482]

Both the 1972-1995 and the post-1995 definitions of "hazardous waste" in the HWCL make reference to Health & Safety Code §25141, which reads as follows:

> (a) The department shall develop and adopt by regulation criteria and guidelines for the identification of hazardous wastes and extremely hazardous wastes. (b) The criteria and guidelines adopted by the department pursuant to subdivision (a) shall identify waste or combinations of waste, that may do either of the following, as hazardous waste because of its quantity, concentration, or physical, chemical, or infectious characteristics: (1) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness. (2) Pose a substantial present or potential

---

Transactions," Peter H.Weiner and Roger Lane Carrick, as published in "Hazardous Waste and Real Property Transactions: Advanced-Level Real Property Programs," California Continuing Education of the Bar (1989); **Environmental Liability and Real Property Transactions: Law and Practice**, by Joel S. Moskowitz (John Wiley & Sons, 1989); "Environmental Law Issues in Real Property Transactions for Buyers, Sellers, and Lenders: Sand Traps in Substantive Law and Due Diligence," pp. 384-417, **Environmental Issues in Business Transactions**, edited by Mitchell H. Bernstein, Roger L. Carrick and Stanley M. Spracker (Prentice Hall Law & Business 1989); **Real Estate Transactions and Environmental Risks: A Practical Guide**, by Donald C. Nanney (Executive Enterprises 1990); and **Miller & Starr**, §29:35 *et seq.*

[481] Amended by Stats.1995, c. 638 (SB 1222). The core definition of a "waste" during this period is "any material for which no use or reuse is intended and which is to be discarded." Health & Safety Code §25124(a); see also *People v. Martin*, 211 Cal.App.3d at 706.

[482] These definitions of "hazardous waste" were subject to further regulatory definition at 22 CCR §66261.3.

> hazard to human health or the environment, due to factors including, but not limited to, carcinogenicity, acute toxicity, chronic toxicity, bioaccumulative properties, or persistence in the environment, when improperly treated, stored, transported, or disposed of, or otherwise managed. (c) Except as provided in Section 25141.5, any regulations adopted pursuant to this section for the identification of hazardous waste as it read on January 1, 1995, which are in effect on January 1, 1995, shall be deemed to comply with the intent of this section as amended by this act during the 1995 portion of the 1995-96 Regular Session of the Legislature."[483]

The regulations called for in this latter section further define "hazardous waste" and are set forth in Title 22 of the California Code of Regulations ("CCR") at sections 66261.10-66261.24.[484] These regulations are administered by the California Department of Toxic Substances Control ("DTSC").[485]

E. What Are The Duties Imposed On Those Who Have To Deal With Hazardous Substances And/Or Hazardous Wastes In The Development Context?

In the face of these highly complex, scientific regulations, a private landowner faced with evidence of a hazardous substance release (or even discovery of hazardous waste disposal) might conservatively apply California's Superfund Act's reporting requirement codified at Health & Safety Code §25359.4 and report the prior release or potential hazardous waste disposal to DTSC.

However, any potential for reflection is precluded for a public entity like the LAUSD, which is under an ***affirmative duty*** pursuant to the HWCL (at Health & Safety Code §§25242-25242.3) to notify the DTSC and thereafter follow the DTSC's detailed plan of investigation and remediation via a DTSC-defined hazardous waste management plan. The LAUSD must follow in this context DTSC's requirements and procedures for managing hazardous wastes, but via proper application for appropriate waivers, LAUSD could resolve any lingering questions about various components of the contamination, whether the contamination included classic RCRA wastes or non-RCRA waste like crude oil "drilling fluids," "drilling muds," "oil and water," and "waste (or slop) oil."[486]

---

[483] Amended by Stats. 1995, c. 638 (SB 1222). From 1977-1995, Section 25141 only contained the language found in the current statute up to (b.)

[484] These complex and highly scientific definitions have been specifically upheld as lawful in application in *People v. Hale*, 29 Cal.App.4th 730 (1995).

[485] Prior to 1991, the Division of Toxic Substances Control in the California Department of Health Services administered the HWCL. The California Environmental Protection Agency ("Cal/EPA") succeeded to the powers of the California Health and Welfare Agency by virtue of Governor Pete Wilson's submission of a reorganization plan to the California Legislature, which plan was approved on July 17, 1991. In this reorganization, the Division of Toxic Substances Control was recast as a department within Cal/EPA and renamed accordingly.

[486] *See*, for example, the statutory provisions set forth at Health & Safety Code §25143 (added by Stats. 1977, c. 1039) whereby a party otherwise subject to the HWCL with regard to

F. What Is A "Hazardous Waste Disposal Site" Under California Law?

The disposal and resulting presence of hazard wastes on an LAUSD property poses other issues for the LAUSD as well. A "hazardous waste disposal site" is given the same definition by Education Code §17213(d)(5) as "hazardous waste disposal site" is given by the HWCL at Health & Safety Code §25114, which states that:

> " 'Disposal site' means the location where any final deposition of hazardous waste occurs."

"Disposal" is further defined at Health & Safety Code §25113 as

> "discharge . . . spilling, leaking . . . any waste or any constituent of the waste so that the waste or any constituent of the waste . . . is or may be discharged into or on any land . . ."

This definition is quite broad, and has been interpreted by the California courts to encompass hazardous wastes found to be abandoned on real property.[487]

As a result, one can reasonably conclude that hazardous waste abandoned on real property meets the definition of a "hazardous waste disposal site." If the LAUSD, which is under an affirmative duty to investigate and report hazardous wastes on its property, determined that hazardous waste had been disposed at Belmont, a number of legal duties would thus have been triggered. Whether those duties were triggered is the key question.

G. Was The Contamination Identified To LAUSD At Belmont "Hazardous Waste," Making The "Belmont Learning Center " A "Hazardous Waste Disposal Facility"?

Did Belmont in fact have hazardous waste abandoned on real property, thereby constituting a hazardous waste disposal site? The facts, scientific analysis and appropriate application of applicable law suggests that the answer is yes.

H. The Environmental Investigations In 1989, 1990 And 1994

The environmental contractor brought in by LAUSD's Safety Team in 1998, ESC, provided the LAUSD and subsequently the DTSC the following analysis of the environmental assessments previously conducted at the 11 acre and 24 acre parcels that became the site of the Belmont Learning Complex.

"hazardous waste" can obtain a variance, either for purposes of obtaining a classification of the contamination as non-hazardous, or obtaining a permitted management plan for those wastes, for non-RCRA regulated wastes. *See also* 22 CCR §66260.210 regarding procedures to follow in seeking such a variance.

[487] *People v. Taylor*, 7 Cal.App.4th 677, 686-688 (1992).

1. **November 2, 1988: Property Transaction Environmental Assessment And Soil Sampling Plan For Pacific Rim Plaza, Los Angeles, California; McLaren Environmental Engineering.**

This assessment was conducted on the former Pacific Rim Plaza portion of the property (28-acre western portion of the BLC site and now the location of the main campus of the BLC, which includes the Softball Field and the academic, athletic, and retail facilities). The report identified two potential source areas of chemicals in site soils, one at the intersection of 1st Street and Beaudry Avenue and the other at the intersection of Toluca and Colton Streets.

At the corner of 1st Street and Beaudry Avenue, historic uses included an automobile body shop, tire service shop, auto service station, and an upholstery shop. These historic operations used two 4,000-gallon and one 6,000-gallon USTs, two hydraulic lifts, several pump islands, and one sump (locations identified on Figure 1 of the McLaren report). Five production oil wells were reported to exist at Toluca and Colton Streets, and McLaren observed that a pipeline was observed running above-ground and then going underground to some unidentified location. A 1000-gallon waste oil UST, and a hydraulic lift trench were reported to exist on the site along Beaudry Avenue. McLaren recommended a further investigation of 13 soil borings in the 1st Street and Beaudry Avenue area and four soil borings in the area of Toluca and Colton streets.

2. **March 9, 1989: Subsurface Investigation For The Pacific Rim Plaza Property In Los Angeles, California; McLaren Environmental Engineering.**

This investigation focused solely on the former service stations located on the former Pacific Rim Plaza portion of the property (28-acre western portion of the BLC site and now the location of the main campus of the BLC, which includes the Softball Field and the academic, athletic, and retail facilities). McLaren located a previously unidentified clarifier/sump and suspected the existence of another waste oil UST at the BLC site in the area of 1st Street and Beaudry Avenue. McLaren installed 12 soil borings and excavated exploratory trenches to investigate potential areas of concern. It was concluded by McLaren that fuel petroleum hydrocarbon contamination in soil existed to a depth of 25 feet below ground surface (bgs). McLaren did not characterize the lateral extent of contamination. Report recommendations included:

- the removal of the three fuel USTs and the suspected waste oil UST;
- the removal of contaminated soil from the fueling station;
- the evaluation of the extent of offsite contamination;
- the removal of the contents of a previously unidentified clarifier/sump and the hydraulic lift trench; and
- the installation of four additional soil borings in the area of the clarifier/sump and the suspected waste oil tank.

3. May 22, 1990: Report Of Phase I Site Assessment, Including Phase II Workplan For Belmont Junior High No. 1.; ABB Environmental Services, Inc.

This investigation focused on the then-proposed Belmont Junior High School property (11-acre northeastern portion of the BLC site and now the location of the Football and Baseball Fields). The review of historical aerial photographs conducted as part of the investigation revealed that the site was primarily occupied by single-family residential buildings in the 1920s, which were replaced with multiple-family residential buildings by the 1940s. On Temple Street, it was reported that there were several multi-story commercial buildings. A lot at the corner of Temple Street and Beaudry Avenue was occupied by an automobile service station with two 4000-gallon fuel USTs and a hydraulic lift, as shown in Figure 4 of this ABB report. Reportedly, the automobile service station also stored drums and had a yard drain.

According to the California Division of Oil and Gas ("DOGGR") records reviewed by ABB, one active oil well and 13 abandoned oil wells existed on this portion of the BLC site. Nearby properties reportedly experienced crude oil seeps. According to the ABB report, oil field wastes and buried pipelines may have also existed on the property. ABB cautioned that potentially explosive or toxic gases could be present at the site. ABB recommended the following:

- a geophysical survey of the site to identify oil wells and USTs,
- a methane gas survey,
- the installation of soil borings and monitoring wells, and
- an exploration of historic oil well locations.

The ABB Phase II Workplan was implemented and is discussed in the following two report summaries.

4. October 1990: Geochemical Investigation of Near Surface Hydrocarbon Gas Accumulations in Soil, Belmont Jr. High School; GeoScience Analytical. *(Volume II, Appendix A of the ABB Phase II Report dated November 1990).*

This investigation was conducted by GeoScience Analytical for ABB Environmental Services, Inc. and was included as an appendix to the ABB Phase II Report dated November 1990. Fifty-seven shallow gas samples (3 to 4 feet bgs) were collected and analyzed for hydrocarbons (carbon range $C_1 - C_4$) and H_2S. Three samples contained methane at concentrations above background levels.

Forty-five soil gas samples were obtained from the soil borings at a depth of 20 feet bgs. Fifteen soil gas monitoring wells were also installed and methane gas was reported at concentrations four times higher than the lower explosive limit (LEL).

GeoScience Analytical concluded, based on their investigation, that there was no evidence that abandoned oil wells were leaking methane at the time of their report. GeoScience Analytical further concluded that there were several areas of "dry" and "wet" methane located in shallow site soils. GeoScience Analytical recommended that during site preparation or construction that precautions should be taken to avoid enclosing areas in which methane gas migrating from the soil could be trapped. They also recommended that during construction activities, gas monitoring equipment and a trained operator be maintained at the site. Figure 3 of this GeoScience Analytical report presented a contour map of concentrations of methane exceeding 1,000 ppm (v/v) in soil.

5. November 1990: Phase II Site Investigation Report, Belmont Junior High School No. 1, Los Angeles, California (Volumes I-III); ABB Environmental Services, Inc.

This report included a summary of the results of the GeoScience Analytical October 1990 report. ABB completed 61 soil borings to depths ranging from 15 feet to 55 feet bgs. Three groundwater monitoring wells were also completed to depths of 34.5 feet, 40 feet, and 89 feet bgs.

A total of 119 soil samples were collected and analyzed for total petroleum hydrocarbons (TPH) via EPA Method 418.1. Of the 119 soil samples, 22 were analyzed for semivolatile organic compounds (SVOCs) by EPA Method 8270. The 22 soil samples were selected using the results of the TPH analysis. In addition, selected samples were also analyzed for polychlorinated biphenyls (PCBs) by EPA Method 8080, volatile organic compounds (VOCs) by EPA Method 8240, metals by EPA Method 8010, and fuel hydrocarbons by EPA Method 8015 Modified.

Groundwater samples were obtained from two of the monitoring wells (MW-2 and MW-3). The groundwater samples were analyzed for VOCs by EPA Method 624.

ABB also excavated 25 test pits in an attempt to locate former oil wells onsite. DOGGR records reportedly indicated the existence of 13 abandoned oil wells within the 11-acre northeastern portion of the BLC site. The pit investigation located ten possible oil wells.

ABB found that elevated levels of petroleum hydrocarbons (1,000 to over 10,000 ppm) were found in subsurface soils, primarily at depths greater than 10 feet bgs. ABB concluded that these hydrocarbons appear to be related to naturally occurring crude oil. ABB also found that levels of flammable hydrocarbons (primarily methane) were detected above the LEL in site soils at several areas. ABB concluded that the site may pose a fire and explosion hazard, that hazards related to crude oil seeps exist at the site and that soil stability problems may be encountered during construction.

Based on the information available at the time of the report, ABB recommended the installation of a passive gas collection and venting system and to cover the site with an impermeable barrier to prevent methane gas from migrating out of site soils. ABB cautioned that consideration be given to the potential failure of the barrier beneath the buildings due to differential settlement and/or movement caused by earthquakes. ABB further recommended that an additional geophysical investigation be conducted following the demolition of historic onsite buildings for the purpose of locating former oil wells and that qualified environmental personnel be onsite during grading activities.

6. March 1994: Report Of Subsurface Investigation, Pacific Rim Plaza, Los Angeles, California; ENV America.

The objective of this investigation was to supplement the earlier investigation conducted by McLaren (McLaren report dated March 9, 1989). Field activities for this investigation included drilling seven test borings, collecting seven soil vapor samples from hollow stem drill augers, driving and sampling eight soil vapor sampling points, collecting 39 soil samples for analysis, and a visual inspection of general site conditions. Selected soil vapor samples were analyzed for TPH as gasoline. In addition, all soil vapor samples were analyzed for methane and H_2S gas.

The investigation evaluated several individual properties within the site boundary. These properties were: Lario's Tire Service, Independent Auto Works, and the Active Oil Well Property. Results from the soil sample analyses indicated that soils in the vicinity of Lario's Tire Service were impacted by TPH (as gasoline) and benzene, toluene, ethylbenzene, and total xylenes (BTEX). Soils in the vicinity of Independent Auto Works were impacted with low levels of TRPH.

TPH was detected in soil vapor samples from the Lario's Tire Service and Independent Works properties. Methane was detected in shallow soil vapor samples at low concentrations. Vapor samples collected from the soil borings contained a maximum methane concentration of 3.97 percent by volume (more than one-half of the LEL).

ENV America recommended that USTs existing onsite at that time be removed and that any impacted soils be remediated. ENV America also recommended that if any structures are planned over abandoned oil wells, these wells should be abandoned in accordance with DOGGR guidelines.

7. Discoveries Of Hazardous Waste At Belmont During Grading By The Developer

There were at least four instances where hazardous wastes were discovered on the Belmont Learning Center property when grading or other site preparation activity was commenced. In the first two instances, the LAUSD and/or its agents determined that hazardous wastes were present and manifested a portion of the hazardous wastes to a permitted hazardous waste treatment facility. These two instances are discussed in Section A and B below. Sections C and D below describes two instances where the LAUSD and/or it agents discovered materials buried on site that are listed as hazardous wastes in California's hazardous waste regulations contained in 22 CCR §66260 et seq. Under these regulations, one is required to handle these wastes as hazardous unless one determines them to be non-hazardous after following specified procedures. No evidence was found that the LAUSD or its agents followed these procedures, yet the wastes were managed as non-hazardous, then transported to and burned at a non-hazardous waste treatment facility.

a. Abandoned Underground Storage Tanks, Clarifier, Hydraulic Lifts And Impacted Soils At 1101 West First Street

A letter dated December 10, 1997, was sent from Mr. Richard Lui of the LAUSD to Inspector Dean Stivason of the Los Angeles City Fire Department. This letter requested that the Fire Department issue a "no further action" letter based on the activities and results described in an enclosed tank removal report. This report, entitled: "Tank Removal Report, Los Angeles Unified School District, 1st & Beaudry, Los Angeles, California" and dated September 19, 1997, was prepared by Remedial Management Corporation (RMC). The referenced report discusses the removal of 4 underground storage tanks (USTs), a clarifier and two hydraulic hoists and the removal of associated hydrocarbon impacted soils.

The report states that these materials were removed as a result of the investigations that McLaren conducted in 1989, ENV America conducted in 1994 and the soils data generated during RMC's tank removal activities. The report goes on to state: "On March 21, 1997, after a hole was discovered in the southernmost tank during excavation, 900 gallons of fluid were removed from all 3 large USTS and disposed of off site at Demeno [sic] Kerdoon located at 2000 N. Alameda Ave., in Compton, CA under manifest No. 96711790. On July 17, 1997, prior to the removal, the tanks were triple rinsed by Nieto & Sons of Yorba Linda, CA. A total of 1000 gallons of rinseate and 5 drums of sludge were generated and transported to Demmeno [sic] Kerdoon at 2000 N. Alameda Ave., Compton, CA for disposal under manifest No. 96764036."

The report goes on and states: "The waste oil tank had a hole measuring approximately 3" x 1" about midway down on the werstern (sic) side. Liquid and sludge were observed inside the tank at the level of the hole. Discolored soils and strong odors were detected in the waste oil tank cavity after the tank was removed." Analytical results of soils below the waste oil tank revealed concentrations of 6,800 ppm TRPH, 310 ppm TPH - gasoline and 11 ppm total lead.

The contractor also removed 2 hydraulic lifts and sampled soils underneath both lifts. Soils beneath lift #2 had a TRPH concentration of 4,100 ppm. It is common knowledge in the environmental remediation industry that waste oils many times contain PCB concentrations above hazardous waste levels. However, no PCB analyses were conducted on these soils or on the source fluids.

Inspections of the two referenced manifests show that the wastes sent to Demenno Kerdoon were classified as "NON RCRA HAZARDOUS WASTE LIQUID". The contractor also removed the soils that were impacted by the hazardous wastes that leaked from the USTs, clarifier and the hydraulic lifts. While the analytical results generated from the impacted soils combined with the contractor's experience of handling gasoline and diesel impacted soils could be a basis to conclude the fuel impacted soils would not be a hazardous waste, the same cannot be said of the waste oil impacted soils.

Review of the analytical tests that the contractor performed and the discussion in his report shows that he did not conduct all of the analyses required under 22 CCR §66261.3 to determine that the waste oil impacted soils were not a hazardous waste. Specifically, no toxicity testing for carcinogenic polynuclear aromatics (PNAs) or PCBs appears to have been performed. These constituents are typically found in waste oils and hydraulic fluids. The Department of Toxic Substances Control has classified soils as hazardous waste with carcinogenic PNA concentrations as low as 26.7 mg/Kg.[488] The PCB hazardous waste threshold limits cited in 22 CCR §66261.24 are 5.0 mg/L (soluble) and 50 mg/Kg (total). Therefore, under the regulatory requirements contained in 22 CCR §66262.11, unless the generator can cite a basis as to why the materials would not have elevated concentrations of PCBs or carcinogenic PNAs, he was required to manage these soils as hazardous wastes.

The report states that a total of 3,439.75 tons of impacted soils were excavated and sent to TPS Technologies, a non-hazardous waste treatment facility located in Adelanto, California. This volume includes an unspecified amount of waste oil and hydraulic fluid impacted soils that were` burned at the TPS Technologies facility.

b. Abandoned Underground Storage Tanks And Impacted Soils On Parcel 47, Corner Of Boylston And Mignonette Streets

On January 14, 1998, Dennis C. Wilcox, Commander, Environmental Unit, LA City Fire Department, signed a "no further action" letter that was addressed to Mr. Richard Lui of the LAUSD. It appears that this letter was in response to a request for "no further action" made by the LAUSD. Mr. Wilcox's letter is specific to the "Closure Report for the Belmont Learning Center; 1200 Colton Street, Los Angeles, California," dated November 1997, as submitted by El Capitan Environmental Services ("El Capitan").

Review of the referenced closure report finds that El Capitan was retained by Mr. Lui to remove two 500 gallon diesel underground storage tanks. These tanks were encountered during grading activities being conducted at lots #3 and #5 of Parcel 47 at the corner of Boylston Street and Mignonette Street. The tanks were excavated and removed on October 22, 1997. 750 gallons of "NON RCRA HAZARDOUS WASTE LIQUID" were removed and manifested to Demenno [sic] Kerdoon, a permitted hazardous waste facility in Compton, California. Additionally, a total of 91.32 ton of petroleum hydrocarbon-impacted soils were manifested (as non-hazardous waste) and hauled to Landmark Materials in Irwindale, California.

While El Capitan's report refers to these tanks as diesel tanks, it does not appear that El Capitan sampled the wastes in the tanks to confirm that the liquids were exclusively diesel fuel wastes. Because these tanks were uncovered during grading operations, it appears that the history of usage of these tanks is not known. It is not uncommon for such abandoned tanks to hold a variety of materials that the former owner disposed of in the tanks instead of sending such materials off site to a permitted hazardous waste facility at potentially significant expense. Such materials could include waste chlorinated solvents, waste oils, waste hydraulic fluids (which have a history of being cross contaminated with PCBs), paint thinners, etc. Based on the closure report, it is apparent that El Capitan did not conduct adequate analyses to determine if the 750 gallons of waste liquids contained these contaminants. Regardless, the contractor made the determination (with the LA City Fire Department's inspector on site) that the liquids were a hazardous waste and so manifested them. Without conducting detailed sampling, this is a reasonable and prudent approach to handling the waste liquids and is the approach required by California hazardous waste regulations (22 CCR §66262.11).

---

[488] July 17, 1999 Waste classification letter to Mr. Ron Zeff, Trammell Crow Residential from Caryn Woodhouse, Alternative Technology Division, Toxic Substances Control Program, Department of Health Services.

The contractor sampled the soils that were impacted by these leaking USTs. The soils were analyzed for TPH-diesel, benzene, toluene, ethyl-benzene and xylene (BTEX) and lead. No analyses for chlorinated solvents, PCBs or paint thinners compounds such as acetone were included in the closure report. It should be noted that McLaren's 1988 report noted various paint containers laying on the ground at the Georges Body Shop and the property manager pointed out that paint thinners and adhesives were stored and used at Avila Upholstery. Both facilities were located on the subject property. Despite not generating the data as required by 22 CCR 66261.3, El Capitan determined that the impacted soils were not a hazardous waste. El Capitan excavated the soils and shipped them to Landmark Materials (a non-hazardous waste facility) in Irwindale, California for treatment on October 31, 1997. A total of 91.32 tons of impacted soils were treated at this facility.

Review of the analytical tests performed by El Capitan and the discussion in its closure report shows that El Capitan did not conduct the requisite analyses required under 22 CCR §66261.3 to determine that the soils were not a hazardous waste. Detection of PCBs, waste solvents or paint thinners are very difficult to determine without analytical testing. The history of the use of these tanks and the materials that they held does not appear to be known given the circumstances surrounding their discovery. In fact, review of the Underground Storage Tank Permit Application - Form B that was filled out by a Mr. Harry Boyajian and dated October 16, 1997 indicates that the construction of the piping system was unknown, the material and corrosion protection was unknown, and the tank leak detection was unknown. Furthermore, the tank closure information section of the form was left blank. Specifically, the "Estimated Date Of Last Used", "Estimated Quantity Of Substance Remaining", and "Was Tank Filled With Inert Material" were all left unanswered.

Based on the requirements defined in 22 CCR §66262.11, it appears that neither LAUSD or its agent, El Capitan, had adequate information to demonstrate that the hazardous waste impacted soils were not in fact a hazardous waste. As such, these materials are required to be classified and manage as a hazardous waste as stated in 22 CCR §66262.11 and §66261.3.

c. Discovery Of Drilling Mud Pit At The "Future Bleacher Area"

The discovery of a drilling mud pit at the "Future Bleacher Area" was addressed in a January 13, 1998 memo to Mr. Rodger Friermuth from Mr. Richard Lui. In his memo, Mr. Lui describes a petroleum hydrocarbon contaminated area where soils were removed and disposed of. Specifically, he states that it is "suspected that the area is a former pit used to hold fluids when drilling for crude oil."

Such wastes are explicitly defined as hazardous wastes in the 22 CCR §66261, Appendix X listings. This section of regulations requires that drilling fluids, drilling muds and waste oil (among others) be managed as a hazardous waste unless it is determined not to be hazardous waste pursuant to procedures set forth in 22 CCR §66262.11 and §66261, Appendix X. These three hazardous waste types are explicitly identified by regulations as hazardous wastes due to toxicity and also corrosivity for drilling fluids.

While Mr. Lui acknowledges that contamination is present in this pit, he states that crude oil is not regulated as a hazardous substance under Title 40, CFR §300.5. However, it should be noted that in California, drilling muds, drilling fluids and waste oil are hazardous wastes until it can be demonstrated either through generator knowledge or testing that these materials are not hazardous wastes (22 CCR §66262.11). Neither Mr. Lui's memo nor the contractor's report for this area mention any toxicity or corrosivity testing that one could use to determine that these wastes were non-hazardous. Mr. Lui's memo states that the soils removed from this pit were sent to TPS Technologies. This facility, which operates a thermal oxidizer, is not permitted to receive or treat hazardous wastes.

d. Discovery Of Waste Oil Disposal Pit, Court Street And Beaudry Avenue

An October 9, 1997 memo describes another instance where the LAUSD discovered material on the Belmont Learning Center property that should have been classified as hazardous wastes yet was handled as non-hazardous. This memo was also sent to Mr. Friermuth from Mr. Lui. Mr. Lui states that petroleum hydrocarbon impacted soils were uncovered during grading operations. The soils were removed from a pit the contractor dug that measured six wide, by six feet long by 4 feet deep (144 cubic feet). The soils were tested and found to contain 35,000 ppm of motor oil. The discovery of this much motor oil in such a large volume of soils indicates that the site unearthed was a waste oil disposal site and not just the surface staining from a leaking vehicle.

Under 22 CCR §66261, Appendix X, waste oil is listed as a hazardous waste due to toxicity and must be managed as such unless the generator determines the waste to be non-hazardous under the procedures specified in 22 CCR §66262.11. Review of Mr. Lui's memo and the related contractor's report did not show any evidence of toxicity tests of these soils to demonstrate that the soils were not a hazardous waste. These soils were also sent to TPS Technologies to be burned as non-hazardous wastes.

I. Findings Regarding "Hazardous Waste" At Belmont

1. Hazardous Waste Was Disposed At Belmont

The evidence and analysis suggests that the LAUSD and/or it agents, on more than one occasion, made the determination that hazardous wastes were disposed of on the Belmont Learning Center property. Some of these wastes were explicitly identified and discussed in early (1989 through 1994) environmental assessment reports. When the LAUSD and/or its agents went to remove these materials, they properly classified these wastes as hazardous, properly managed them as hazardous waste, and properly disposed of them at a permitted hazardous waste treatment facility.

Despite the LAUSD's recognition that the materials they manifested were hazardous wastes, it appears that the LAUSD and/or its agents did not conduct adequate testing of the soils that were impacted by these hazardous wastes. However, the LAUSD and/or its agents, on more than one occasion, chose to classify, manage and dispose of such hazardous waste impacted soils as non-hazardous. The off site disposal method typically was through burning by a low temperature thermal desorption treatment unit.

Additionally, it appears that, on more than one occasion, the LAUSD and/or its agents chose to classify various wastes as non-hazardous despite those waste being explicitly stated in California hazardous waste regulations as being hazardous wastes. These wastes include soils impacted by waste oils, drilling fluids, and other oils that may have been contaminated with PCBs or chlorinated solvents. The regulations do provide the LAUSD the opportunity to classify such materials as non-hazardous but require that demonstrative proof (either through unique generator knowledge or through proper testing) be made. Review of the records do not show that LAUSD had such knowledge or conducted the proper testing of these materials such that a non-hazardous waste determination could be reasonable made. Therefore, these materials are required under regulations (see 22 CCR 66261.3) to be classified as hazardous wastes and to be managed and disposed of at a permitted hazardous waste facility. Such a facility must treat and dispose of these materials to meet land ban standards as defined in 22 CC 66268.1 et seq. Instead, the disposition of these hazardous wastes appears to have been by burning at a non-hazardous waste facility.

For purposes of Education Code §17213, then, a violation occurred in that the School Board proceeded to acquire a site that (1) was a hazardous waste disposal site, and (2) contained one or more pipelines, situated underground or aboveground, which carried hazardous substances, acutely hazardous materials, or hazardous wastes.

2. LAUSD And Its Agents Failed To Investigate Properly The Question Of Hazardous Wastes Management At Belmont

As noted above in the ESC report discussion, a number of environmental assessment reports were written prior to LAUSD's acquisition of the Belmont property. LAUSD employees, consultants and attorneys had access to and reviewed these reports prior to the acquisition of this property. Many of these reports identified specific areas where hazardous waste management units, as defined in 22 CCR 66260.10, existed.

22 CCR 66260.10 defines hazardous waste management unit as:

> "Hazardous waste management unit" is a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of hazardous waste management units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, a waste transfer area, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

Some of the hazardous waste management units that were identified in the various property assessment reports included abandoned waste oil tanks that still contained waste oil, abandoned clarifier(s) that still contained waste oil and water and abandoned fuel tanks that still contained waste fuels. Additionally, these reports identified areas affiliated with these hazardous waste management units where the soils were impacted by these hazardous wastes. Many of these reports specifically recommended that the contents of these hazardous waste management units (as well as the units themselves) be sampled, removed and sent to a proper treatment/disposal facility. These reports also recommended that soils impacted by these hazardous wastes be sampled, removed, and properly disposed of.

Because the LAUSD or its agents had reviewed these reports prior to its acquisition of the property in question, it knew that abandoned hazardous waste management units and soils impacted by hazardous wastes existed at this property in 1994. Therefore, the LAUSD should have also known that it was purchasing a "hazardous waste facility" as defined in Health & Safety Code §25117.1 and 22 CCR 66260.10. This regulation defines "Hazardous waste facility" as follows:

"Hazardous waste facility," "hazardous waste management facility," "HW facility," or "facility" means:

> (a) all contiguous land and structures, other appurtenances, and improvements on the land used for the treatment, transfer, storage, resource recovery, disposal or recycling of hazardous waste. A hazardous waste facility may consist of one or more treatment, transfer, storage, resource recovery, disposal or recycling operational units or combinations of these units.

It should also be noted that by acquiring this property, the LAUSD should have also known that it had to meet the statutory requirements contained in Health & Safety §§25284 and 25295, regarding the regulation of underground storage of hazardous substances.

Because the extent of the various releases noted in the environmental assessment reports had not yet been fully defined, the LAUSD was required to report these releases within 24 hours of being responsible for them and submit a "full written report" within five working days. This report must address investigative actions and further corrective or remedial actions. Thus, the LAUSD was required by statutes to report the releases, investigate the property to define the full extent of the releases and to cleanup the impacts caused by the releases.

3. Other Health And Safety Code Violations Occurred As Well

Under this analysis, the evidence and analysis suggests similar findings of a violation of California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5 (sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4), in the acquisition and management of both the 11 acre and 24 acre parcels that now make up Belmont. A duty to investigate and then report is required under each of these statutes.

J. Should the "Hazardous Waste Property" Permit Process Have Been Triggered?

Health & Safety Code §25221 requires that a person apply to DTSC for designation of hazardous waste property because the person is an "(1) owner . . .[who] knows, or has probable cause to believe, that a significant disposal of hazardous waste has occurred on, under, or into the land which he or she owns . . ." and "(2) "intends to construct or allow the construction on that land of a building or structure to be used for a purpose which is described in subdivision (b) of [Health & Safety Code §25232 with one year . . . shall apply to [DTSC] prior to construction for a determination as to whether the land should be designated a hazardous waste property or a border zone property. . ." (emphasis added) Given that the proposed land use was for a school, one can easily argue that the standard to be applied to defining "probable cause to believe" was higher than might otherwise be applied to industrial or commercial development. As the government agency charged with the protection of student, staff and public safety, LAUSD can arguably be held to the highest standard for "probable cause to believe" under this statute.

LAUSD as a school district is a person pursuant to Health & Safety Code §25221 (see Health & Safety Code §25118 for definition of "person."). Health & Safety Code §25232(b)(1)(C) includes as the type of construction subject to this permitting process "A school for persons under 21 years of age." Violations of Health & Safety Code §25221 shall be pursued by DTSC as "feasible civil and criminal actions" against any "operator or other responsible party who violates any provision of this chapter . . ." More specifically, Health & Safety Code §25196 provides that "Any person who knowingly violates a provision of subdivision (a) of Section 25221 . . . shall be subject to a civil penalty not to exceed 25 percent of the fair market value of the land and improvements, 25 percent of the sale price of the land and improvements, or fifty thousand dollars ($50,000), whichever has been established and is greatest."

Based upon the factual evidence and analysis set forth above, a violation of this provision by LAUSD and/or its agents occurred with regard to Belmont if a **"significant"** disposal of hazardous waste occurred. In answering this question, one is encouraged in this view by reliance upon judicial characterizations of the Resource Conservation and Recovery Act ("RCRA"), in that the California Hazardous Waste Control Law expressly relies upon RCRA for interpretation wherever California law needs further definition. See Health & Safety Code §25110.

Applying the then-contemporary holdings in Zands v. Nelson 779 F. Supp. 1254 (S.D. Cal. 1991), Kaiser Aluminum & Chemical Corp. v. Catellus Development Corp., 976 F.2d 1338 (9th Cir. 1992), and Price v. U.S. Navy, 39 F.3d 1011 (9th Cir. 1994), to the facts at hand, the analysis based on these judicial precedents again appears to be yes. In Zands, an imminent and substantial endangerment to health or the environment sufficient to support a cause of action under RCRA exists at a site where gas has leaked from underground storage tanks and contaminated soil. Price qualified this concept, but nonetheless found that to hold a defendant liable under RCRA, there must be a present threat, (although the impact of the threat may not be felt immediately), that the endangerment must be substantial or serious and there "must be some necessity for the action." Because Health & Safety Code §§25242-25242.3, as well as Health & Safety Code §25359.4 requires the LAUSD to report the factual and scientific situation to the California Department of Toxic Substances Control, and in light of the applicable RCRA caselaw, the conditions for triggering Health and Safety Code §25221 *et seq.* were met at Belmont. And upon the disturbance of this hazardous waste via the grading of the property at Belmont, Kaiser Aluminum would compel a finding of further disposal of hazardous wastes, potentially by the grading contractor, developer and land owner.

K. Conclusion As To Environmental Findings

As a result, the evidence and analysis suggests that the LAUSD violated California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4), in the acquisition and management of both the 11 acre and 24 acre parcels that now make up Belmont, and several of the environmental consultants, grading contractors and even the developer may have violated some or all of these laws as well.

CHAPTER 19

ADDITIONAL ANALYSIS OF ENVIRONMENTAL LIABILITY ALLOCATION

A. Acquisition Of Shimizu Property "As Is" Failed To Provide Adequate Economic Protection To The LAUSD For Assumed Environmental Liabilities

The contract to acquire the 24 acre Shimizu parcel provided that the property was purchased "as is," thus removing certain warranties by the seller, and remedies for the buyer, that would otherwise inure to the benefit of LAUSD. While not uncommon in commercial real estate transactions, this contract provision places more responsibility on the buyer to determine whether any conditions of the property are unacceptable to the buyer. Coupling an "as is" clause with due diligence by the seller's consultants is significantly less likely to provide adequate information and protection to the buyer.

This Purchase and Sale Agreement was entered into as of December 17, 1993, between S-P Realty Company, LP and Los Angeles Unified School District. The Purchase and Sale Purchase and Sale Agreement provides for the purchase and sale of the [24-acre] property in exchange for the purchase price. See Sections 2 and 3. The Purchase and Sale Agreement requires S-P to deliver to Buyer a Preliminary Title Report and related documents and provides a mechanism for addressing any of the items set forth in the Title Report. See Section 4.1.

The Buyer also has the right to inspect the Property. The right granted is a broad one to conduct "tests, surveys, studies, inspections and investigations... as shall be deemed necessary, desirable or appropriate by Buyer." See paragraph 5.2 (d). Among the items specifically subject to inspection are "environmental hazards," *Id.* However, Buyer has only approximately 39 days from the execution of the Purchase and Sale Agreement to the original Closing Date.

Buyer's obligation to close escrow and purchase the Property is subject to standard conditions. Among the more pertinent include conditions that the Seller's representations and warranties were to be true and correct when made, on closing date and as of the close of escrow.[489] The sale is also conditioned on the LAUSD School Board approving the acquisition and expenditure of $30,000,000 transferred from the Ambassador Hotel Site Project. See 5.2 (g). The Purchase and Sale Agreement made Buyer's acquisition conditional on approval by the LAUSD School Board of a negative declaration (possibly including mitigation measures) reaching a conclusion that no Environmental Impact Report was required for the purchase and development of the Property as a school site. See 5.2 (h).[490] Interestingly, both 5.2 (g) and (h) were set for dates prior to the execution date of the Purchase and Sale Agreement. The final condition to Buyer's acquisition was that the SAB issue all necessary approvals concerning environmental, funding or other matters that are required. See 5.2 (i). Thus, the Purchase and

---

[489] There was a notable absence of environmental reps and warranties.

[490] Ultimately, the project was the subject of an Environmental Impact Report in 1996. *See* Exhibit 118.

Sale Agreement contemplates that the SAB requirement of a Phase II report demonstrating that the school site would be safe (from an environmental standpoint) would be completed before the transaction closes. There was actually under a month to complete the required Phase II. Unfortunately, the request from the Facilities Branch to the Environmental Health and Safety Branch to undertake a Phase II investigation was not sent until January 11, 1994 and the Request for Proposal was not sent out by EHS until February 15, 1994. While the timeframe for the acquisition had been extended somewhat after the Purchase and Sale Agreement's execution, thus allowing some modification of deadlines, it is clear that the actions required to initiate the Phase II process were significantly delayed to the extent that compliance with the conditions in the Purchase and Sale Agreement were put at risk

The conditions to Seller's obligations to sell the property parallel those of the Buyer. See Section 5.3.

The Seller represented and warranted only three things: (1) that documents were duly authorized and Seller had the authority to enter into the Purchase and Sale Agreement; (2) that the Seller would not enter into any unrecorded encumbrances or restrictions burdening the Property unless it disclosed them; and (3) to the "best actual knowledge" of one specific individual, Robert Pendergast, that the property did not violate any laws and that Sellers had received no notice of any such violations except those set forth in an exhibit to the Purchase and Sale Agreement. The only such notice was a Notice of Violation from the City of Los Angeles City Fire Department regarding an underground storage tank.

Buyer represented that it had the authority to enter into the Purchase and Sale Agreement. The parties mutually agree to indemnify the other for any breach of the representations and warranties in paragraphs in 8.1 and 8.2.

The Purchase and Sale Agreement also provides that except for the Seller's express representations and warranties, the conveyance of the property was on an "AS IS AND WITH ALL FAULTS BASIS."

Paragraph 9 purports to disclaim any other representations or warranties and attempts to be expansive by listing, among other things, "... hazardous substances or toxic wastes, or any other matter arising or relating to the Property." Buyer expressly acknowledges its independent investigation of the continuing validity of existing of governmental approvals and any additional approvals which may be required, and acknowledges that it is not relying upon Seller in connection therewith. Buyer also acknowledges its completion of sufficient inspections to make its decision to acquire the Property exclusively on the basis of those inspections. Additionally, Buyer acknowledges it is informed of the environmental issues set forth in an attached environmental report prepared by ENV Environmental Engineering. Specific mention is made of oil wells on a portion of the property, use of a portion of the property as a gas station, the existence of 4 operating oil wells on the property, and the possibility of underground tanks being located on the property.

Notices to the buyer were to go to Dominic Shambra and Richard Mason, Esq. with copies to David Cartwright of O'Melveny & Myers, Robert Niccum of the LAUSD.

Paragraph 11.12 provides that Buyer's sole recourse in the event Seller becomes obligated to pay Buyer a money judgment arising out of any default for breach by Seller under the Purchase and Sale Agreement is limited to Seller's interest in the Property or any proceeds arising from the sale of the Property, to the exclusion of any other property of the seller.

Finally, the document is executed on behalf of the District by Robert Niccum, its Director of Real Estate. The Purchase and Sale Agreement is approved as to form by O'Melveny & Myers and signed by David Cartwright of that firm.

That closing date was ultimately extended to March 30, 1994, over 100 days after execution of the Purchase and Sale Agreement. This time frame should have been sufficient for LAUSD to perform its own due diligence. This conclusion is reinforced by considering that in August 1993, over seven months before the actual closing date, the EHSB recommended a Phase II be performed. Had arrangements been commenced in the summer or fall of 1993, the Phase II process could certainly have been timely completed by LAUSD itself.

No one involved in the transaction on behalf of the LAUSD, either internally or externally, fulfilled the responsibility to ensure that the Phase II was undertaken in a timely, complete manner that advanced the LAUSD's best interests. Mr. Shambra as the internal proponent of the acquisition with responsibility for satisfying the LAUSD's conditions, Mr. Mason and O'Melveny as the LAUSD's outside counsel on the transaction were most directly responsible for ensuring that this critical due diligence was undertaken.

As discussed above, O'Melveny did not raise the option of environmental insurance with LAUSD personnel. If pursued, environmental insurance and the process of qualifying for it might have resulted in more complete, timely characterization and remediation of the Belmont property coupled with protection against remediation cost overruns and other benefits.[491] Remarkably, the Internal Auditor has found no evidence that Mr. Cartwright nor any other O'Melveny attorney ever proposed consideration of environmental insurance to the LAUSD in the context of the DDA negotiations, notwithstanding the widespread knowledge and practice of real estate lawyers. *See generally* Richard D. Jones, "The Genesis and Growth of Insurance for "No Fault" Environmental Liability in Real Estate Transactions," in **Environmental Liability in Commercial Property Transactions: Risks and Responsibilities**, American College of Real Estate Lawyers (published by the Section of Real Property, Probate and Trust Law of the American Bar Association 1994), pp. 135-166.

---

[491] Interview with David Cartwright, dated August 12, 1999.

CHAPTER 20

INTERNAL AUDITOR REQUESTS BELMONT DOCUMENTS

The creation and construction of The Belmont Learning Complex is an immense undertaking by any standard. Despite its size, the Belmont project is eclipsed only by the quantity of documents that its creation, development and construction have produced. Though completing the Belmont has proved to be quite a daunting task for LAUSD, so too has been the task of locating, assembling, reviewing, organizing and managing the massive amounts of written documentation that comprises the record of its evolution. The Internal Auditor and his staff has collected and reviewed over fifteen thousand (15,000) documents that total over 250,000 pages. This enormous and comprehensive document review became the foundation for the Internal Auditor's "Internal Investigation".

On March 26, 1999, the Internal Auditor sent written requests for all Belmont-related documents to LAUSD Chief Administrative Officer, David Koch and Chief Financial Officer, Olonzo Woodfin asking for their full cooperation in the investigation. The CAO and CFO directed their respective staffs to cooperate with the investigation and turn over any and all Belmont-related documents. About the same time, the Internal Auditor sent letters out to LAUSD department and section heads with similar requests for documents. On the same day at a meeting with Terry McConville of LAUSD's Office of General Counsel, Janis Eiler of the Internal Audit and Special Investigations Unit made a verbal request for Belmont Project documents. Three days later on March 29, 1999 CFO, Woodfin, authorized access to all Belmont Project documents requested of him.

Though some key figures within the District made public statements pledging full cooperation with the Internal Auditor and even submitted written assurances of such, the reality of many of the responses can be termed anything but cooperative. Despite the Internal Auditor's duly authorized call for the production of documents and request for cooperation, many respondents were slow to answer or produce documents. The defensive and uncooperative behavior of some senior staff within the District coupled with the hesitancy of many staffers to release Belmont-related documents or cooperate with the investigation made the Internal Auditor's job of ferreting out the truth, all the more arduous and time-consuming. The Internal Auditor decided that the surest way to determine what has occurred in the 10 years since the Belmont Project's inception, was to look back in retrospect, and decipher the innumerable communiqués, reports, studies, agendas, notes, memos and other correspondence that comprise the total Belmont written documentary record.

The following narrative serves to demonstrate the numerous impediments encountered by the Internal Auditor and his staff during their investigation to uncover the facts, the actions, the arrangements and the maneuverings that somehow resulted in the Belmont project's current state of affairs. The narrative attempts to provide a fair and unbiased indication of how cooperative or uncooperative certain individuals within the District have been during the five months of the

Internal Auditor's investigation of the acquisition, development, construction and environmental assessment of the Belmont Learning Complex.

On March 29, 1999 Janis Eiler, Chief Investigative Auditor, attended a meeting at the office of General Counsel about retrieving Belmont Project documents from LAUSD document repository Legal Source. Ms. Eiler later met with a Legal Source representative, an outside vendor for document management to obtain an index and copies of all documents pertaining to The Belmont Project.

On March 30,1999, Ms. Eiler received five boxes of documents from Legal Source. Elizabeth Louargand, General Manager of LAUSD Facilities Services Division sent a memo to the Internal Auditor agreeing to provide "access to all files." On the same day the Internal Auditor sent six boxes of documents to his investigative staff which had been provided to him anonymously.

On March 31, 1999, Ms. Eiler requested more Belmont documents from Legal Source. On April 2, 1999, the Internal Auditor's staff received two boxes of LAUSD's Belmont Project documents Bates stamped with prefix "BLC ED" from Legal Source.

On April 5, 1999, the Internal Auditor's staff received seven boxes of LAUSD's Belmont documents Bates stamped with prefix "BLC GF" from Legal Source. Also on April 5, 1999, the Internal Auditor's staff received thirteen boxes of Belmont-related documents Bates stamped with prefix "BEL" from LAUSD outside counsel, O'Melveny & Myers.

On April 7, 1999, the Internal Auditor's staff received six boxes of LAUSD's Belmont Project documents Bates stamped with prefix " BLC LD" and one box of LAUSD's Belmont Project documents Bates stamped with prefix "BLC DL" from Legal Source.

On April 8, 1999, citing equipment failure as the reason for a delay in providing documents, Legal Source sent a memo to Ms. Eiler along with indexes of all Belmont Project documents.

On April 12, 1999, Ms. Eiler received forty-three boxes of Belmont documents from Elaine Danny, Administrative Consultant from former Director, Dominic Shambra's Office of Planning & Development. Ms. Danny indicated that the forty-three boxes had come from an 11th floor storage room in the IBM Building. On April 13, 1999, the forty-three boxes were received by the Internal Auditor's staff. Also on April 13, 1999, the Internal Auditor's staff received twelve boxes of original Belmont Project documents from LAUSD outside counsel, O'Melveny & Myers.

On April 15, 1999, the Internal Auditor's staff received six boxes of original Belmont documents from LAUSD outside counsel, O'Melveny & Myers. Also on April 15, 1999, the Internal Auditor's staff received one Redweld file of Belmont Project documents said to belong to Dominic Shambra; Bates stamped with prefix "IA" from investigative consultant, Jack Orswell. Again on April 15, 1999, the Internal Auditor's staff received twenty-two boxes of the District's Belmont Project documents Bates stamped with prefixes "BLC DL", "BLC GF", "BLC LD", "BLC LG", and "BLC RR" from Legal Source.

In response to the Internal Auditor's March 26, 1999 request for all Belmont Project documents, Rodger Friermuth, Facilities Project Manager allowed Janis Eiler to pick up one box of documents (14 file folders) from his office on the 5th floor of the IBM Building on April 16, 1999.

The Internal Auditor's staff received one Redweld file of Belmont documents from Richard Mason; Bates stamped with prefix "IA" on April 20, 1999. On the same day the Internal Auditor's staff received one Redweld file of Belmont documents from Ms. Louargand, Bates stamped with prefix "IA".

Because of miscommunications, duplicate billings, misdirected documents, confusion and alleged mistakes at the repository, Legal Source, Ms. Eiler contacted Legal Source on April 20, 1999 and advised them that all Belmont Project documents had not been sent to the right location for review as the Internal Auditor's office had requested. Legal Source attributed the confusion to multiple requests for Belmont documents from the Internal Auditor's staff, other law firms and governmental offices.

On April 21, 1999, Ms. Eiler contacted Legal Source to obtain copies of privilege logs. On April 22, 1999, referencing a letter dated April 2, 1999 from the Internal Auditor; Legal Source expressed a degree of confusion as to where to send Belmont project documents.

On April 23, 1999, Mr. McConville met with Legal Source to help identify Belmont Project privileged documents to send to the Belmont Investigative staff.

The Internal Auditor's staff received three boxes of Belmont Project documents from LAUSD outside counsel, O'Melveny & Myers on April 28, 1999.

The Internal Auditor's staff received two Redweld files of Belmont project documents from Los Angeles Board of Education President, Vicki Castro on April 29, 1999.

The Internal Auditor's staff received seven boxes of LAUSD's Belmont Project documents Bates stamped with prefixes "BLC DL", " BLC ED", and "BLC GF", from Legal Source on April 29, 1999.

The Internal Auditor's staff received one Redweld file of Belmont Project documents from former LAUSD Senior Safety Officer, Sharon Thomas, on May 4, 1999. On the same day the Department of Toxic Substances Control responded to a request for Belmont-related documents by releasing three Redweld files.

On May 5, 1999, with the aid of LAUSD employee Liz Grigsby, the Internal Auditor's staff obtained CEQA documents regarding Belmont, naming Bob Niccum as the District's CEQA officer. Coding of the repository documents differs from information provided by Legal Source. Mr. McConville and Brad Stonen continued working with Legal Source to correctly identify Belmont Project documents.

On May 19, 1999, the Internal Auditor's staff received one Redweld file of Belmont documents from Facilities Services Director, Ms. Louargand.

On May 21, 1999, Ms. Louargand made it known that Belmont Project files had been removed from the Office of Project Management.

Ms. Eiler visited the district's Environmental Health & Safety Office on June 2, 1999 to copy some Belmont Project documents that belonged to Senior EHS Officer, Richard Lui. After 2 hours of copying only a small portion of the documents, Mr. Lui asked Ms. Eiler to leave his office because he had to attend a meeting at the Belmont Project site. On the same day Ms. Eiler received a phone call from Elaine Danny of Dominic Shambra's former office, stating that she had found a file cabinet of Belmont documents "down the hall" in a file storage room. Danny said that she did not know whom the file cabinet belonged to but that it contained about two boxes of Belmont Project documents. In mid-May 1999 the Internal Auditor's staff received one Redweld file containing the employment records of Dominic Shambra from Ms. Eiler.

As a result of an ongoing series of articles about the Belmont Project published by the Los Angeles Daily News, the Internal Auditor's staff submitted a written request to the newspaper for documents, which were the source for its articles. In response to that written request the Internal Auditor's staff received one Redweld file of Belmont-related documents on June 2, 1999. On that same day Elaine Danny located two additional boxes of Belmont documents in Mr. Shambra's office and sent them to the Internal Auditor's staff.

On May 19, 1999, the Internal Auditor's staff received one Redweld file of Belmont documents from LAUSD Safety Team member, Barry Groveman.

On June 1, 1999, received one Redweld file of Belmont Project documents from Director of Real Estate and Asset Management Branch, Robert Niccum.

On June 3, 1999, Ms. Eiler obtained Belmont documents from Los Angeles Board of Education members George Kiriyama (1 Redweld file) and Julie Korenstein (three Redweld files) and delivered them to the Internal Auditor's staff. Ms. Eiler inventoried the documents on June 7, 1999, along with other Belmont documents located in David Tokofsky's office.

On June 3, 1999, Los Angeles Board of Education member, Jeff Horton produced 3 Redweld files of Belmont documents to the Internal Auditor's staff. On the same day 10 Redwelds of Belmont documents were obtained from Board of Education member, Barbara Boudreaux.

Ms. Eiler obtained one Redweld file of documents from David Koff, Senior Research Analyst for the Hotel and Restaurant Employees International Union on June 10, 1999, which she forwarded to the Internal Auditor's staff.

On June 11, 1999, Los Angeles Board of Education member, Valerie Fields produced three Redweld files of Belmont documents to the Internal Auditor's staff.

On June 14, 1999, the Internal Auditor sent a written request for documents to Los Angeles Board of Education President, Victoria Castro and LAUSD Superintendent, Ruben Zacarias. On the same day, Ms. Castro turned over three additional Redweld files of Belmont documents to the Internal Auditor's staff.

Ms. Eiler retrieved four additional, three-ring binders containing Belmont documents from Ms. Louargand's office on June 9, 1999. At Ms. Louargand's insistence, the original binders were returned to her office on June 15, 1999.

Mr. McConville telephoned Ms. Eiler on June 16, 1999, regarding Mr. Lui's Belmont documents stored at Legal Source.

On June 24, 1999, the Internal Auditor's staff received an index list of Richard Lui's Belmont Project files from Legal Source.

On June 29, 1999, the Internal Auditor's staff received a file folder of Belmont Project documents from Yoshiko Fong, acting Controller, LAUSD Accounting and Disbursements Division, a file folder and two Redwelds of Belmont Project documents from David Koch, LAUSD Chief Administrative Officer, and a file folder of Belmont Project documents from LAUSD Contract and Insurance Services Branch Director, Karen Hemingway. Also on June 29, 1999, the Internal Auditor's staff received one Redweld of Belmont-related documents from El Capitan Environmental Services, Inc. and one Redweld of Belmont-related documents from Ecology Control Industries.

Ms. Louragand's office reported on July 1, 1999, that one of the four 3-ring binders of Belmont Project documents returned to her office on June 15, 1999, was returned with some of the documents water damaged.

On July 2, 1999, the Internal Auditor's staff received five Redweld files of Belmont Project documents received from the office Roger Rasmussen, Director of LAUSD Independent Analysis Unit.

Ms. Louargand's replacement, Lynn Roberts contacted the Internal Auditor, stating that more Belmont documents had been found in Ms. Louargand's old office. The newly discovered documents were sent to the Internal Auditor's staff on July 5, 1999.

On July 6, 1999, Ray Rodriguez, Administrative Consultant in the Facilities Services Division sent one file folder of Belmont Project documents to the Internal Auditor's staff.

The Internal Auditor's staff received one Redweld file of Belmont documents from Ms. Louargand on July 7, 1999 and also received an additional eight Redweld files of documents from Ms. Louargand on July 12, 1999.

On July 13, 1999, the Internal Auditor held a meeting with LAUSD Controller, Yoshiko Fong, Accounts Payable supervisor, Howard Kaplowitz, and other pertinent individuals to request production of all Belmont Project financial documents by July 16, 1999. Ms. Fong provided one Redweld file of Belmont financial documents to the Internal Auditor's staff on July 13, 1999, but most of the remaining financial documents were not received by the Internal Auditor's staff until July 20, 1999, with a cover memorandum transmittal back-dated to July 15, 1999.

In mid-July 1999, during an investigation of conditions at the Belmont site, Law/Crandall, Inc. provided four Redwelds of Belmont Project environmental documents for the Internal Auditor's review.

On July 15, 1999, The Internal Auditor's staff obtained one additional Redweld file of Belmont documents from LAUSD Contract and Insurance Services Branch Director, Karen Hemingway.

On July 19, 1999, Chief Administrative Officer, David Koch and General Counsel, Richard Mason sent a written directive to an inter-office distribution list, including: Susie Wong; Thais Rothman; Karen Hemingway; Yi Hwa Kim; Richard Lui; Rodger Friermuth; Ray Rodriguez; Angelo Bellomo; Tom Soto; Barry Groveman; James Wakefield; Greg Patterson; Yoshi Fong; Lonnie Woodfin; Beth Louargand; Lynn Roberts; Bob Niccum; Lyle Smoot; and Ron Prescott. The directive requested that they immediately provide "all materials regarding the Belmont Project that you have obtained since you last provided documents to his (the Internal Auditor's) office." The memorandum also requested, "If you have not provided any documents regarding Belmont to (the Internal Auditor) in the past, please advise him as to any materials related to Belmont in your possession."

On July 20, 1999, Richard Mason provided a few more Belmont documents in the form of one Redweld file.

Though the Internal Auditor had requested all Belmont Project documents in March 1999, Yi Hwa Kim of the Environmental Health & Safety Branch responded with a memorandum with e-mails, reports and other Belmont-related documents totaling approximately three Redwelds attached to it and sent it to the Internal Auditor on July 23, 1999. Concurrently, Howard Kaplowitz provided the Internal Auditor with one Redweld file of documents.

On July 26, 1999, the Internal Auditor's staff obtained five Redweld files of Belmont Project documents from the California Department of Conservation, Division of Oil, Gas and Geothermal Resources (DOGGR).

Ms. Eiler obtained one additional Redweld file of documents from David Koff, of the Hotel and Restaurant Employees International Union on August 2, 1999, which she sent to the Internal Auditor's staff. On the same day, Al Southwood, Administrative Service Manager for the Facilities Services Division submitted one Redweld file of Belmont documents.

On August 6, 1999, Ray Rodriguez, Administrative Consultant in the Facilities Services Division sent Ms. Eiler two Redweld files of current Belmont documents.

On August 10, 1999, Ms. Eiler was summoned to pick up eleven boxes of Belmont Project documents and ten rolls of related architectural/engineering plans from Friermuth's office.

On August 13, 1999, the Internal Auditor's staff received 2 Boxes of Belmont-related documents from the Real Estate Department of LAUSD.

Although the Internal Auditor had previously asked Rodger Friermuth to produce all Belmont Project documents in his possession in March 1999, Friermuth produced only one box of documents on April 16, 1999 and made no mention of the existence of any others.

In mid-August, 1999, Remedial Management Corporation produced 1 box of Belmont Project documents to the Internal Auditor's staff.

On August 17, 1999, David Koch, Chief Administrative Officer released one additional Redweld file of Belmont Project documents to the Internal Auditor's staff.

The Internal Auditor received one additional Redweld file of Belmont Project documents from Director of Real Estate and Asset Management Branch, Robert Niccum on August 18, 1999.

On August 18, 1999 the Internal Auditor's staff received 1-box of "Closed Session materials related to Belmont Learning Center" from General Counsel Richard Mason.

On August 24, 1999, the Internal Auditor's staff received six Boxes of Belmont-related documents from Gibson, Dunn & Crutcher as counsel for LAUSD outside counsel, David Cartwright from O'Melveny & Myers. The same day the Internal Auditor's staff received one additional file folder of Belmont-related documents from Gibson, Dunn & Crutcher.

On September 4, 1999 the Internal Auditor's staff received 6-boxes of Belmont-related documents from Richard Mason through Legal Source. Three days later on September 7, 1999 the Internal Auditor's staff received an additional file of Belmont-related documents from Mr. Mason.

As an integral part of the Belmont Project Internal Audit Investigation, the Internal Auditor's staff was charged with the receiving, organizing, coding and managing documents from a multitude of sources. In every respect the sheer volume of paperwork generated by The Belmont Project could be characterized as a "mountain of documents", however with detailed planning and execution the Internal Auditor and his staff have assembled and reviewed a substantial quantity of the Belmont Project documentation.

CHAPTER 21

INVESTIGATION FINDINGS

During the investigation of the Belmont Learning Complex, the Internal Auditor found probable cause to believe the following: (1) the Education Code and Health and Safety Code were violated by the approval of construction at the Belmont site when probable cause existed that significant hazardous waste had been disposed at the site; (ii) LAUSD's outside counsel failed to exercise due diligence in providing legal advise to the School District; (iii) LAUSD personnel failed to adequately carry out their duties and responsibilities; and (iv) outside contractors failed to provide effective management and oversight of the Belmont Learning Complex project. These violations of applicable state law and management deficiencies resulted in a waste of School District funds and reduced the public's trust of the School District. Based on the investigation, the Internal Auditor makes the following findings of fact and conclusions based on those facts.

A. Findings Regarding The Former LAUSD School Boards

The former LAUSD School Boards faced, in a time of limited financial resources in the late 1980s and early 1990s, a formidable challenge -- to address the dramatically increased needs of the LAUSD to serve a growing student population, including approximately 8,000 in the Belmont attendance district, of which nearly half were being bused on a daily basis from their homes. The former LAUSD School Boards began and pursued what is now called the Belmont Learning Complex with the laudable and important policy goal of providing the first new comprehensive high school built by the LAUSD in 25 years to the attendance district most in need of a modern, high-quality educational facility. The former LAUSD School Boards diligently pursued this goal of providing for a new educational facility to serve the under-served children and their parents of the Belmont attendance area in an atmosphere of financial difficulty, limited real estate options and political controversy. The Internal Auditor believes that, notwithstanding the following findings, this policy goal was and is correct, important, and worthy of completion. The Internal Auditor believes that if the Belmont Learning Complex can be finished in a manner that achieves the twin goals of public safety and educational excellence, it should go forward. There is no viable policy that requires a trade-off between safety and educational excellence.

The former and current LAUSD School Boards had and have no formal mechanism to orient or train new board members as to their responsibilities under applicable law and School Board policy, nor is there a consistent mechanism to analyze and review the bases for professional staff qualifications, professional staff mission and professional staff deployment.

The former LAUSD School Boards had no appropriate legal, scientific or medical standards by which to protect public health and safety in the evaluation of environmental hazards associated with prospective school site acquisitions.

The former LAUSD School Boards had no policy of appropriate legal, scientific or medical standards by which to protect public health and safety in the evaluation of the management of existing school properties for environmental hazards.

The former LAUSD School Boards had no significant prior experience in the management or development of major public/private joint ventures to develop and build new school facilities.

The former LAUSD School Boards' exercise of their respective oversight function with regard to Belmont was ad hoc, uninformed by reference to any policy, and generally rudderless with regard to evaluating the proposed acquisition and development at Belmont, or with regard to the evaluation of environmental hazards associated with Belmont. The former LAUSD School Boards failed to cultivate a culture of professional excellence in the performance of the task of major new facility development. The former LAUSD School Boards tolerated a culture remarkably indifferent to compliance with environmental or public health and safety standards, as well as a culture where accountability for these standards was lax. This culture developed a practice of denying responsibility, deflecting (rather than responding to) criticism, and defending poorly planned and executed LAUSD actions with regard to Belmont.

The LAUSD professional management and staff responsible for Belmont, both past and present, as well as a number of the LAUSD outside consultants on Belmont, misled the former LAUSD School Boards with regard to significant matters of fact, policy and law regarding the Belmont project.

As a result, the former LAUSD School Boards violated California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4), in the acquisition and development of both the 11 acre and 24 acre parcels that now make up Belmont.

B. Findings Regarding Present And Former LAUSD Professional Staff

The LAUSD professional management and staff responsible for Belmont, both past and present, had no significant prior experience in the management and development of major public/private joint ventures to develop and build new school facilities, and had not undertaken the construction of a new high school in 25 years.

The LAUSD professional management and staff responsible for Belmont, both past and present, failed to cultivate a culture of professional excellence in the performance of the task of major new facility development.

The LAUSD professional management and staff responsible for Belmont, both past and present, failed to develop appropriate leadership, management strategies, cross-unit teamwork, and professionally competent staffing sufficient to face and meet the challenge of a Belmont-scale project.

The LAUSD professional management and staff responsible for Belmont, both past and present, failed to properly manage the professional outside consultants brought in to assist on Belmont, and failed to overcome turf rivalry and internal bickering that undermined performance and professionalism. While many of these outside professional consultants failed in their respective roles in serving the LAUSD, their failure does not diminish the importance of this internal failure.

The LAUSD professional management and staff responsible for Belmont, both past and present, developed and tolerated a culture remarkably indifferent to compliance with environmental or public health and safety standards, as well as a culture where accountability for these standards was lax. This culture developed a practice of denying responsibility, deflecting (rather than responding to) criticism, and defending poorly planned and executed LAUSD actions with regard to Belmont.

The LAUSD professional management and staff responsible for Belmont, both past and present, failed to advise the former or current LAUSD School Boards as to (a) the former LAUSD School Boards' potential to violate, or (2) the former LAUSD School Boards' actual violation of, the California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4), in the acquisition and management of both the 11 acre and 24 acre parcels that now make up Belmont.

Certain LAUSD professional staff, including former and current employees, responsible for the management and oversight of the Belmont project in whole or part, personally failed to exercise proper management, supervision and/or professional execution of their assigned responsibilities to conduct the Belmont project in a professional, diligent and lawful manner, or refused to cooperate with this investigation, including:

• C. Douglas Brown	Mr. Brown is retired from LAUSD employment. He was formally supervisor of the construction branch. He refused to cooperate with this investigation.
• Dianne Doi	Ms. Doi was employed as the Deputy Director of the LAUSD's Environmental Health and Safety Branch from 1992 to November 1998, where she had responsibility to address environmental conditions at the Belmont site. She has since been reassigned and is a current LAUSD employee.

• Rodger Friermuth	Mr. Friermuth is a current LAUSD employee. As a Facilities Project Manager, Mr. Friermuth has been assigned to the Belmont project since May 1997.
• Lisa Gooden	Ms. Gooden resigned from LAUSD employment. Ms Gooden was employed as Assistant Director, Litigation Research in LAUSD's Planning and Development Office from January 1996 to April 1998. Ms. Gooden participated in this investigation, but made statements limiting her responsibility for compliance with environmental laws that are inconsistent with the documentary record.
• Rosanne Harding	Ms. Harding has retired from the LAUSD. Ms. Harding was the CEQA officer for the 24 acre Shimizu parcel in 1993. She refused to cooperate with this investigation.
• David Koch	Mr. Koch has had supervisory responsibility for the LAUSD's Environmental Health and Safety Branch from 1990 to the present in his capacity as the Chief Administrative Officer and as the Division Administrator of the Business Services Division.
• Elizabeth Louargand	Ms. Louargand had supervisory responsibility as General Manager for the Facilities Services Division from March 1995 to June 1999.
• Richard Lui	Mr. Lui had direct responsibility as the Environmental Assessment Coordinator within LAUSD's Environmental Health and Safety Branch to address environmental site conditions, from 1996 to the present.
• Richard Mason	Mr. Mason has been the chief legal officer of the LAUSD since 1994.
• Robert Niccum	Mr. Niccum has been the Director of Real Estate and Asset Management Branch for the period of 1990 to the present. Mr. Niccum has also been the designated California Environmental Quality Act officer.
• Raymond Rodriguez	Mr. Rodriquez was employed as the Administrative Coordinator for the Planning and Development Office from 1995 to 1998. Mr. Rodriquez was assigned to Facilities Services Division from 1998 to the present.

• Dominic Shambra	Mr. Shambra was the Director of the Planning and Development Office from 1993 to February 1998. Mr. Shambra was the project executive for the Belmont project.
• Sidney Thompson	Mr. Thompson's superintendency extended during the majority of the time in which Belmont's land was acquired and planned for development from 1993 to 1997.
• Susie Wong	Ms. Wong was Director of Environmental Health and Safety Branch for the period of 1990 to December 1996, where she had supervisory responsibility to address environmental site conditions.
• Dr. Ruben Zacarias	Upon Mr. Thompson's retirement in 1997, Dr. Ruben Zacarias became Superintendent of the LAUSD. Prior to becoming superintendent, Dr. Zacarias served the LAUSD as the Deputy Superintendent from 1992 to 1997.

C. Findings Regarding Certain State Agencies

The California Department of Education failed until 1999 to exercise its statutory duty pursuant to the California School Facilities Act (Education Code section 17251) to set and maintain appropriate legal, scientific or medical standards by which to protect public health and safety in the evaluation of environmental hazards associated with prospective school site acquisitions, and more specifically, in 1993 and 1994 by approving state funds for the acquisition of the Belmont school site.

The Governor's Office of Planning and Research failed in 1994 and 1996 (and may continue on other school projects) to exercise its statutory duty to provide an appropriate clearinghouse function in its administration of the California Environmental Quality Act ("CEQA") by consistently failing to refer CEQA documents concerning Belmont to the California Department of Toxic Substances Control.

D. Findings Regarding The LAUSD's Professional Consultants Or Vendors On Belmont

El Capitan, Inc., breached its duty of professional care to the LAUSD with regard to its evaluation of environmental conditions and management of hazardous wastes, hazardous substances and hazardous materials on the Belmont property.

Ernesto Manuel Vasquez and McLarand, Vasquez & Partners, Inc., the architect and architectural firm retained to assist first the LAUSD on the architectural design of Belmont, while concurrently competing as the architect for Temple Beaudry Partners LLC, the developer of Belmont, breached its duty of professional care by engaging in a direct conflict of interest, as well as in failing its duty of professional care in the execution of its architectural professional services with regard to the conditions posed by Belmont, including but not limited to the environmental conditions.

Law-Crandall, Inc., breached its duty of professional care to the LAUSD in its evaluation of the environmental conditions and management of hazardous wastes, hazardous substances and hazardous materials on the Belmont property.

O'Melveny & Myers LLP, the law firm retained to assist the LAUSD on Belmont, and its partner, David W. Cartwright, breached their duty of professional care in the representation of the LAUSD with regard to (a) the acquisition of the 24 acre parcel of land that makes up part of Belmont, by failing to advise the LAUSD of its legal duties and responsibilities as to both real estate and environmental legal issues; (b) the recommendation to the LAUSD School Board of an exclusive Belmont developer that O'Melveny and Mr. Cartwright concurrently represented, by failing to take the proper steps to recuse its personnel from decision-making roles in the selection of that proposed developer, with whom O'Melveny had a conflict of interest via concurrent representation of a principal partner in that proposed developer partnership, and (c) the negotiation of the Development and Disposition Agreement with the developer of Belmont, by failing to protect LAUSD's interests.

Remedial Management Corporation breached its duty of professional care to the LAUSD with regard to its evaluation of the environmental conditions and management of hazardous wastes, hazardous substances and hazardous materials on the Belmont property.

Temple Beaudry Partners LLC, the developer of Belmont, mislead the regulatory authorities, including but not limited to, the California Department of Toxic Substances Control and the Los Angeles City Fire Department, with regard to the environmental conditions and management of hazardous wastes, hazardous substances and hazardous materials on the Belmont property. Temple Beaudry Partners LLC also failed to meet its contractual responsibility with regard to mitigation of the methane present at Belmont.

E. Findings That LAUSD's Organization And Reporting Arrangements For School Construction Failed To Ensure That Belmont Learning Complex Project Was Adequately Managed

The Internal Auditor has identified the unique reporting relationship of the Planning and Development Office to the Superintendent's Office, and not to the Facilities Management Division as a major systemic shortfall within the LAUSD's organization. This reporting relationship resulted in a lack of coordination of traditional school construction functions.

This reporting arrangement was established by Superintendent Bill Anton, but continued by Superintendent Sidney Thompson. This split in reporting authority created a chasm between the traditional Division reporting relationships among the facilities design, construction planning and oversight, legal, and environmental functions within the LAUSD.

F. Findings That LAUSD's Personnel Failed To Ensure That State Laws Were Followed By Conducting Adequate Environmental Investigations And Risk Assessments

The Internal Auditor has found that the LAUSD staff assumed that the Belmont site did not contain hazardous substances, but rather "naturally occurring" petroleum hydrocarbons from the Los Angeles Oil Field. This distinction was made based upon an erroneously interpreted federal legal definition of the term "hazardous substance," which had categorically exempted "petroleum hydrocarbons." LAUSD staff and Board did not act upon environmental assessments to determine whether there were scientifically-determined toxic, hazardous, or explosive substances in or below the Belmont site prior to acquiring the property.

The internal LAUSD environmental review performed at the Belmont site demonstrated serious, and indeed fundamental, misperceptions and misunderstandings regarding applicable legal principles, including but not limited to the requirements for reporting the existence of hazardous substances, the steps required to properly characterize (from both a noninvasive/Phase I and an invasive Phase II prospective) environmental impaired property, and an inability to evaluate appropriate steps to be taken in response to those pieces of information which were made available. The following are examples of these problems.

1. The Inadequate Characterization Of Property To Locate And Identify Hazardous Waste In Violation Of California Education Code Section 17213 And The California Environmental Quality Act

The Internal Auditor has found that LAUSD does not have proper procedures or personnel to determine whether a selected school site complies with the provisions of California Education Code Section 17213. The early warning signs of industrial and oil field contamination were known from the earliest stages of the Belmont site selection process in 1990. LAUSD personnel failed to adequately assess and remediate and mitigate the potential for methane gas, and hazardous waste materials present on the site.

a. Belmont Middle School Site

This property was identified and selected by 1990. The Phase I and Phase II environmental studies conducted by ABB Environmental clearly identified the industrial and oil field contamination issues, including biogenic methane (created by degrading crude oil) and hazardous materials from industrial sumps, oil sumps and leaking underground storage tanks.

LAUSD failed to take adequate steps to determine that the 11 acre middle school site was located on property where previous human activity resulted in the disposal of hazardous waste. The presence of a hazardous waste disposal site triggers the provisions of California Education Code Section 17213 and the California Environmental Quality Act, Public Resources Code Section 21151.8.

b. Belmont Learning Complex Site

This property (the Shimizu 24 acre parcel) was identified and acquired in 1994. It was known to be located over an active oil field and known sources of hazardous waste.

For example, in August 1993, the LAUSD Environmental Health and Safety Branch prepared a "Preliminary Site Assessment and Senate Bill 2262 Screening" of the Belmont New Senior High No. 1, Los Angeles, California, for the facilities planning and real estate branch of LAUSD. In the executive summary the report states ". . . the site is in compliance with the requirements of State Education Code §39003 (formerly Senate Bill 2262) as evidenced by the following:

- The site is not an existing or former landfill location.
- There are no hazardous materials and pipelines traversing the site.
- The site is not listed as a hazardous materials relief site.

Therefore, there are no known Senate Bill 2262 restrictions in regard to the purchase of this property. This discussion takes the narrowest possible reading of hazardous wastes disposal facility, and in doing so departs from the plain language of the statute. It is unclear from a document whether the statute was taken pursuant to a formal policy of the LAUSD with regard to definition of hazardous waste, but clearly reflects a determination made by the authors of the document. Such conclusions precluded any further examination of the site's compliance with SB 2262 requirements, and ultimately resulted in the possible violation of California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4), in the acquisition and management of both the 11 acre and 24 acre parcels that now make up Belmont, and several of the environmental consultants, grading contractors and even the developer may have violated some or all of these laws as well.

2. Inadequate Characterization Of Site Prior To Initiating Development And Construction Of The Belmont Learning Complex

As stated above, the Internal Auditor has reason to find that LAUSD personnel failed to properly characterize the construction site, prior to the commencement of construction. This decision to deal with environmental hazards as they were encountered during the grading process did not meet with applicable state standards for remediation or mitigation of hazardous conditions.

G. Findings That LAUSD's Personnel Failed To Ensure That Effective Management And Oversight Were Provided To Outside Consultants

The Internal Auditor confirmed that there was substantial basis to question the manner in which the developer of the design-build Belmont project was selected: (1) the team of consultants was relatively inexperienced with the design-build process; (2) the selection criteria used to select the winning development team emphasized the speculative and non-school components of housing and retail; (3) there were no appropriate conflict of interests policies; and (4) there were no appropriate record keeping of evaluation analyses.

CHAPTER 22

RECOMMENDATIONS

In light of the foregoing findings and analysis, the Internal Auditor recommends the following steps be implemented by the current LAUSD School Board:

1. **Reform School Board Practices:** Establish and maintain a program of orientation for new board members as to their responsibilities under applicable law and School Board policy. Establish and maintain a systematic approach to asserting claims of confidentiality and attorney/client privilege that comport with applicable law and sound public policy, and enforce those policies in a disciplined and systematic fashion. Establish a LAUSD systemwide ethics and conflict of interests policy that comports with applicable law and sound public policy.

2. **Provide Disciplined Leadership, Promote Excellence And Ensure Integrity:** Exercise its oversight function with regard to school acquisition and construction processes in a more disciplined and focused manner. Demand excellence in the quality of staffing and in their performance by requiring periodic performance evaluations. Require that the LAUSD School Board be advised in writing as to whether school facility acquisition, development or construction recommended by LAUSD staff comply with LAUSD School Board policy and all applicable laws. Adopt a comprehensive conflict of interest policy that requires all LAUSD employees, as well as consultants, developers, attorneys and any other contract employee or entity, who work on school acquisition, development or construction matters in any form of supervisory role be subject to the conflict of interest rules of the Fair Political Practices Act (California Government Code section 82000 *et seq.*, especially 82014, 82019, 87100, and the related regulations set forth in Title 2 of the Code of California Regulations, section 18700 *et seq.*). Prohibit the solicitation of campaign contributions by any LAUSD employee or consultant (or any agent on their behalf) from any LAUSD employee or consultant over whom the soliciting LAUSD employee or consultant has supervision or control.

3. **Develop New Environmental/Public Health And Safety Policies:** Develop and adopt an appropriate policy or policies of legal, scientific or medical standards, by which to protect public health and safety in setting policy for the evaluation of environmental hazards associated with prospective school site acquisitions and for the management of existing school properties for environmental hazards, especially those that pose a threat to student, staff or public health and safety. This policy must take into consideration all legal requirements imposed by local, regional, state and federal law, as well as contemporary scientific and professional standards. The LAUSD School Board should coordinate this proposed policy development to comport with the new legislative requirements Senate Bill 162 (Escutia), which was passed by the California Legislature late in this session, if that legislation is signed into law by Governor Gray Davis.

4. **Review And Restructure Professional Staff Functions:** Undertake a thorough review of the current policies and administrative structure for the acquisition, development and management of LAUSD facilities and all other properties. Based on that review, change the administrative structure and practice of the LAUSD to accomplish, as a minimum, the following:

A. School Facilities' Function

- Employ and compensate appropriately a senior professional manager and related employees, all of whom have the requisite education, experience and expertise in the acquisition, development and construction of school buildings on real property (avoid the promotion of unqualified or inexperienced individuals who happen to have either tenure and/or seniority of employment within the LAUSD).

- Redesign all of the functions related to school site acquisition, development and construction to work closely together in a professional manner to implement all laws and School Board policy relating to school property acquisition, development and management.

B. Environmental Compliance Function

- Establish an entity separate and apart from the facilities function, and provide this separate entity with a leader, who by education, experience and expertise, can and will assemble employees with the requisite professional education, experience and expertise, such that as a unit they can be held responsible for all environmental as well as occupational or public health and safety functions within the LAUSD (including but not limited to compliance with the California Environmental Quality Act), and make this unit separate by function and line of command from any other LAUSD Division, in order to maximize a system of checks and balances necessary to assure implementation of LAUSD policy and applicable law as well as to protect LAUSD from future liability.

C. General Counsel Functions

- Review and reform the function of the General Counsel in order to accomplish the following goals: (1) provide independent legal advice to the School Board, (2) provide legal advice and oversight to the professional LAUSD staff on all matters of compliance with law and School Board policy, and (3) represent (in concert with other professional staff) the LAUSD before all local and state agencies with regulatory powers or financial authority (i.e., involving loans, grants or other financial commitments to or from the LAUSD).

- Create an Independent Counsel to the School Board, whose function would be to provide legal advice and counsel with regard to compliance with law and School Board policy, separate and apart from advice to the LAUSD professional staff as provided by the General Counsel.

- Restructure the Office of the General Counsel of the LAUSD to provide for a General Counsel and separate Assistant General Counsel positions to be responsible for (a) human resources and worker compensation matters; (b) school finance and real property management; (c) environmental and occupational health and safety matters; (d) litigation; (e) compliance with state and federal laws relating to the LAUSD (*i.e.*, federal education laws, the California Education and Government Codes and their implementing regulations); and (f) internal affairs (this position would assist the Internal Auditor in providing counsel and assistance to internal audits and special investigations).

- Require the Office of the General Counsel to draft for School Board approval the new Conflict of Interest Policy, to maintain all necessary records to implement that policy, and to train all impacted persons on the requirements of that policy, and then to review and report to the School Board on a quarterly basis any additions or deletions from those persons subject to the conflict of interest policy, and any disciplinary actions recommended or taken to enforce that conflict of interest policy.

- Require that the Office of the General Counsel recommend for School Board approval a formal policy with regard to the creation, maintenance, dissemination and protection of any document for which a claim by the LAUSD to attorney/client or attorney work product privilege should attach. This policy should be designed to balance the competing interests of the public's right to know with the School Board's legitimate, fiduciary duty to protect the LAUSD's legitimate rights to formulate policy with and upon the advice of legal counsel.

5. Discipline Certain LAUSD Employees: In compliance with all applicable LAUSD and State Personnel Commission requirements, and any other applicable requirement of law, the Internal Auditor recommends that following LAUSD personnel should be disciplined:

D. Recommended For Discipline[492]

a. Dianne Doi: Discipline in an appropriate manner, up to and including termination. Ms. Doi was employed as Deputy Director of Environmental Health Services Branch ("EHSB") from September 1997 to November 1998. Ms. Doi reported to the Director of EHSB. Ms. Doi is a current employee of LAUSD, who has been reassigned to another branch.

With respect to the Belmont project, Ms. Doi's duties as the Deputy Director of EHSB included:

- Organizes and directs the activities of a multi-section branch as an assistant to the Director to carry out the duties of the Director of EHSB; and

- Assures that services, equipment, facilities and procedures conform to applicable regulations and District policies.

---

[492] All of those persons named, above who are not now employed by the LAUSD, if they were still employed by LAUSD, would have received the same recommendation for discipline as those listed here in alphabetical order.

The Internal Auditor has probable cause to believe that Ms. Doi should be disciplined, at a minimum, on the following grounds:

1. Ms. Doi failed to ensure that the LAUSD School Board did not violate state environmental laws, including but not limited to California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4).

2. Ms. Doi failed to ensure that the Belmont project site was properly characterized for environmental hazards prior to the acquisition, development and construction of the Belmont project.

3. Ms. Doi failed to oversee the work of environmental consultants and contractors, including Law/Crandall, Ecology Control Industries, Intera, Inc., Grayson Service, Remedial Management Corporation, El Capitan and Calex.

b. Rodger Friermuth: Discipline in an appropriate manner, up to and including termination. Mr. Friermuth is a Project Manager II within the Project Management and Construction Branch. Mr. Friermuth began working on the Belmont project in approximately May 1997. With respect to the Belmont, Mr. Friermuth's duties and responsibilities include the following:

- Direct and participate in the study and planning of school building; prepare fund applications;

- Submit plans for approval to the State Architect; direct the implementation of projects; review project construction progress; and solve problems that impede project progress;

- Acquisition of additional properties; demolition and clearing of improvements; property maintenance; and

- Coordinate with the District's Environmental Health and Safety Branch ("EHSB").

Mr. Friermuth has informed the Internal Auditor that he had no say in the design and construction of the facility because it was a design-build project managed by Kajima Urban Development. Mr. Friermuth also informed the Internal Auditor that he was not responsible for the environmental assessment conducted by the EHSB.

However, the Internal Auditor has probable cause to believe that Mr. Friermuth should be disciplined, at a minimum, on the following grounds:

1. Mr. Friermuth failed to require Temple Beaudry Partners LLC to properly, and in a timely manner, design and install a methane barrier system beneath all buildings and hardscape at the Belmont Learning Complex site.

2. Mr. Friermuth failed to properly coordinate with EHSB to obtain the proper environmental assessment of excavated and removed contaminated soil at the Belmont Learning Complex site.

3. Mr. Friermuth failed to fully cooperate with the Internal Auditor's investigation by providing eleven boxes of documents to him on August 10, 1999, although requested to provide documents on April 16, 1999.

c. David Koch: Discipline in an appropriate manner, up to and including termination. Mr. Koch has had supervisory responsibility for the LAUSD's Environmental Health and Safety Branch as the Division Administrator of the Business Services Division and as the Chief Administrative Officer for the period of 1990 to the present. Mr. Koch is currently the Chief Administrative Officer, and the EHSB continues to report to him through subordinate managers, including the Business Manager, Deputy Business Manager, and the Director of EHSB. Mr. Koch reports directly to the Superintendent.

Mr. Koch has informed the Internal Auditor that in April 1994, then Superintendent Sidney Thompson informed him that Mr. Shambra would be responsible for the acquisition of the 24-acre site and related environmental issues and that the EHSB would not be further involved, after Mr. Koch raised the concern of Ms. Wong that EHSB was eliminated from the environmental site assessment prior to acquisition. Mr. Koch has also informed the Internal Auditor that in February 24, 1993, he advocated for regulatory agency oversight by Cal/EPA on environmental remediation by sending a letter to Richard Mason.

However, the Internal Auditor has probable cause to believe that Mr. Koch should be disciplined, at a minimum, on the following grounds:

1. Mr. Koch failed in his duty to ensure that the LAUSD School Board did not violate state environmental laws, including but not limited to California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4).

2. Mr. Koch failed to carry out his supervisory responsibilities by interpreting an April 1994 oral directive from Superintendent Sidney Thompson to defer to Mr. Dominic Shambra on the acquisition of the 24 acre Shimizu site, as a

basis for abandoning LAUSD EHSB's responsibility to conduct proper environmental due diligence on the 35 acre Belmont Learning Complex site.

3. Mr. Koch failed in his supervisory responsibilities by not taking timely corrective action with respect to implementing LAUSD EHSB policy and properly staffing the Belmont Learning Complex site environmental assessment function.

d. Elizabeth Louargand: Discipline in an appropriate manner, up to and including termination. Ms. Louargand had supervisory responsibility for the LAUSD's Facilities Management Division Administrator for the period of March 1995 to June 1999. Ms. Louargand has recently been reassigned to another branch within LAUSD.

While Facilities Division Administrator, Mr. Friermuth reported to Ms. Louargand. With respect to the Belmont project, Ms. Louargand's duties as the Facilities Division Administrator included:

- Administrator responsible for the District's facilities construction and school utilization programs.

Ms. Louargand has informed the Internal Auditor that in October 1996, she was informed that EHSB would be responsible for all environmental remediation and mitigation measures. Ms. Louargand has also informed the Internal Auditor that she confirmed with her supervisor in writing in May 1997 that Temple Beaudry Partners was responsible for the project management of the construction of the Belmont project.

However, the Internal Auditor has probable cause to believe that Ms. Louargand should be disciplined, at a minimum, on the following grounds:

1. Ms. Louargand failed to ensure that the LAUSD School Board did not violate state environmental laws, including but not limited to California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4).

2. Ms. Louargand failed to require Temple Beaudry Partners LLC to properly, and in a timely manner, design and install a methane barrier system beneath all buildings and hardscape at the Belmont Learning Complex site.

3. Ms. Louargand failed to properly coordinate with EHSB to obtain the proper environmental assessment of excavated and removed contaminated soil at the Belmont Learning Complex site.

4. Ms. Louargand failed to fully cooperate with the Internal Auditor's investigation by failing to provide boxes of additional documents discovered after vacating her office. These documents were later identified by other LAUSD personnel on July 5, 1999.

e. Richard Lui: Discipline in an appropriate manner, up to and including termination. Mr. Lui was hired as a Safety Officer in the EHSB least April 1989. In August 1996, Mr. Lui became an environmental assessment coordinator within EHSB, where he is assigned to the present.

With respect to the Belmont project, Mr. Lui's duties as the Environmental Assessment Coordinator of EHSB included:

- Manage environmental investigations of proposed construction on existing District sites and on acquisitions of real property by identifying project objectives, establishing priorities, preparing environmental impact documents, selecting consultants and contractors and monitoring their field work and budgets., and assuring that hazardous substances are disposed of in compliance with legal requirements;

- Analyze complex documents to evaluate noise levels, air quality and risk of upset (fire, explosion, exposure to toxic substances related to third party development and District construction activities at or near District schools; and

- Recommend environmental mitigation and remediation requirements.

Mr. Lui informed the Internal Auditor that he was not involved in the environmental site assessment of the 24 acre Shimizu parcel in 1994, and that he did not have oversight responsibilities for methane barrier systems, since the consultant was hired by the developer.

However, the Internal Auditor has probable cause to believe that Mr. Lui should be disciplined, at a minimum, on the following grounds:

1. Mr. Lui failed to ensure that the LAUSD School Board did not violate state environmental laws, including but not limited to California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4).

1. Mr. Lui failed to ensure that the Belmont project site was properly characterized for environmental hazards prior to the development and construction of the Belmont project.

2. Mr. Lui failed to oversee the work of environmental consultants and contractors, including Law/Crandall, Ecology Control Industries, Intera, Inc., Grayson Service, Remedial Management Corporation, El Capitan and Calex.

3. Mr. Lui failed to fully cooperate with the Internal Auditor's investigation by failing to provide boxes of additional documents, and prohibiting the Internal Auditor's team access to EHSB documents on June 2, 1999.

f. Richard Mason: Discipline in an appropriate manner, up to and including termination. Mr. Mason has been employed by the LAUSD as General Counsel since 1994. He served as Special Counsel to the LAUSD School Board from 1987 to 1994. As the General Counsel, Mr. Mason is the chief legal officer for LAUSD, who is responsible for establishing policies and procedures to ensure that LAUSD complies with all applicable federal, state and local laws and regulations, including environmental and education code requirements.

Mr. Mason is responsible for the following functions:

- Establishing proper policies and procedures to ensure compliance with applicable federal, state and local environmental and education laws and regulations;
- Managing and supervising the representation of outside counsel O'Melveny & Myers LLP in its representation of LAUSD in the site acquisition of the 24 acre Shimizu parcel, the negotiation and drafting of the "as is" purchase agreement, and the negotiation and implementation of Disposition and Development Agreement with Temple Beaudry Partners LLC; and
- Managing the work of outside counsel and in-house attorneys to ensure compliance with applicable federal, state and local environmental and education laws and regulations.

The Internal Auditor has probable cause to believe that Mr. Mason should be disciplined, at a minimum, on the following grounds:

1. As the LAUSD's chief legal officer, Mr. Mason failed to ensure that the LAUSD School Board did not violate state environmental laws, including but not limited to California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4).

2. As the LAUSD's chief legal officer, Mr. Mason failed to properly supervise the work of outside counsel, O'Melveny & Myers, and the work of in-house counsel, Lisa Gooden, who although not qualified to render environmental advice, did provide such legal advice to LAUSD staff and School Board.

3. As the LAUSD's chief legal officer, Mr. Mason failed to institute proper policy and management to ensure LAUSD's compliance with applicable environmental legal requirements.

4. Mr. Mason failed to fully cooperate with the Internal Auditor's investigation by failing to provide correspondence files directly related to the Belmont project, which were in his personal possession, until September 4, 1999.

g. Robert Niccum: Discipline in an appropriate manner, up to and including termination. Mr. Niccum was Director of Real Estate and Asset Management Branch from at least 1990 to present. During the period including 1990 to June 1999, Mr. Niccum was designated by the LAUSD School Board as the CEQA officer for the purpose of meeting the requirements of CEQA as it applies to State-funded lease-purchase projects within LAUSD.

With respect to the Belmont Learning Complex, Mr. Niccum's duties and responsibilities include, but are not limited to the following:

- Plans, organizes, directs, and participates in professional real estate work, including surveying for and recommending the purchase or lease of real property; negotiating purchases; dealing with governmental agencies regarding assessments and zoning;
- Directs, reviews, and participates in the preparation of technical reports and records, including those required by environmental regulatory agencies; and
- Prepares and presents reports and recommendations to the Board and a committee thereof and represents the District relative to real estate matters before the Los Angeles City Council, County Board of Supervisors, planning and zoning commissions, and other governmental units.

Mr. Niccum is responsible for having the requisite knowledge of a number of substantive areas, including but not limited to the following areas:

- Laws, regulations, and District policies pertinent to real estate transactions;
- Contract law and legal terminology involved in real estate transactions; and
- Environmental law and regulations affecting real estate transactions in California.

Mr. Niccum has informed the Internal Auditor that as a CEQA Officer, he was responsible for obtaining "input from various technical disciplines" and "each department was responsible for identifying or approving the analysis of potential issues for the CEQA documents and mitigation for any impacts falling within their discipline." Mr. Niccum has stated that EHSB was responsible for screening site acquisitions at the Belmont Learning Complex site pursuant to Education Code Section 17213.

However, the Internal Auditor has probable cause to believe that Mr. Niccum should be disciplined, at a minimum, on the following grounds:

1. Mr. Niccum failed to ensure that the LAUSD School Board did not violate state environmental laws, including but not limited to California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4).

2. Mr. Niccum failed to properly coordinate with EHSB to obtain the proper environmental assessment of the Belmont Learning Complex site.

3. Mr. Niccum failed to fully cooperate with the Internal Auditor's investigation by not providing all documents in his position. Mr. Niccum produced one Redweld of privileged documents to the Internal Auditor on August 18, 1999, although requested to provide any and all documents on or after March 26, 1999.

h. Raymond Rodriquez: Discipline in an appropriate manner, up to and including termination. Raymond Rodriquez was employed with LAUSD from 1977 to 1990. Prior to coming back to work with LAUSD, Mr. Rodriquez was the Chief Operations Officer for the Sacramento City Unified School District from 1990 to 1995. In July 1995, Mr. Rodriquez was hired as the Administrative Coordinator in the Planning and Development Office. Mr. Rodriquez was assigned to the Planning and Development Office from July 1995 to February 1998, when the office was eliminated. Mr. Rodriquez was transferred to the Facilities Division and was promoted to Director of Project Management and Construction Branch in February 1999.

With respect to the Belmont project, Mr. Rodriquez's duties as the Administrative Coordinator of the Planning and Development Office were difficult to ascertain due to his guarded responses to interview inquiries. Mr. Rodriquez informed the Internal Auditor that he was a coordinator to ensure that LAUSD Facilities Division personnel (Rodger Friermuth) and EHSB personnel (Richard Lui) were informed of construction activities and environmental conditions at the Belmont site. Mr. Rodriquez informed the Internal Auditor that he had no direct involvement with environmental concerns related to the Belmont site. However, the documentary records speaks otherwise.

The Internal Auditor has probable cause to believe that Mr. Rodriquez should be disciplined, at a minimum, on the following grounds:

1. Mr. Rodriquez failed to ensure that the LAUSD School Board did not violate state environmental laws, including but not limited to California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4).

2. Mr. Rodriquez failed to require Temple Beaudry Partners LLC to properly, and in a timely manner, design and install a methane barrier system beneath all buildings and hardscape at the Belmont Learning Complex site.

3. Mr. Rodriquez failed to properly coordinate with EHSB to obtain the proper environmental assessment of excavated and removed contaminated soil at the Belmont Learning Complex site.

4. Mr. Rodriquez failed to properly coordinate with EHSB to ensure that the Belmont Learning Complex site was fully characterized for environmental hazards prior to construction.

5. Mr. Rodriquez failed to fully cooperate with the Internal Auditor's investigation by failing to provide candid and accurate information regarding his knowledge of, and involvement with, environmental conditions at the Belmont Learning Complex site in his interview of May 20, 1999.

i. Susie Wong: Discipline in an appropriate manner, up to and including termination. Ms. Wong was Director of Environmental Health and Safety Branch from 1986 to December 1996. With respect to the Belmont project, Ms. Wong's duties as the Director of Environmental Health and Safety Branch included:

- Planning developing and directing the implementation of District wide environmental health and safety and accident prevention programs;
- Planning, directing and coordinating the District's hazardous material management program;
- Planning and directing the activities of the environmental studies lab and the asbestos testing lab;
- Directing environmental health investigations;
- Establishing criteria for site inspections;
- Authorizing necessary corrective measures and may prohibit the use of unsafe facilities;
- Coordinating the Districts' compliance with legal requirements pertaining to safety, fire prevention, industrial hygiene and hazardous waste;

- Directing and evaluating the line management and supervision of the organization staff;
- Directing the review of work by contractors for compliance with state, federal, local and District safety requirements; and
- Supervising the preparation of publications of regulations and bulletins pertaining to safety, fire prevention, industrial hygiene, and hazardous materials.

Ms. Wong informed the Internal Auditor that she was given an oral directive in 1994 to cease carrying out her responsibilities for the Belmont project, and that Mr. Shambra and the Office of Planning and Development would be responsible for conducting necessary environmental assessments. Ms. Wong has informed the Internal Auditor that EHSB was not requested to assist in any environmental remediation efforts until September 1996.

The Internal Auditor has probable cause to believe that Ms. Wong should be disciplined, at a minimum on the following grounds:

1. Ms. Wong failed to ensure that the LAUSD School Board did not violate state environmental laws, including but not limited to California's School Facilities Act (Education Code section 17213), California's Environmental Quality Act (California Resources Code 21151.8), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4).

2. Ms. Wong failed to ensure that the Belmont project site was properly characterized for environmental hazards prior to the development and construction of the Belmont project.

3. Ms. Wong failed to properly oversee the work of EHSB employees and the work of environmental consultants and contractors, including Law/Crandall, Ecology Control Industries, Intera, Inc., Grayson Service, Remedial Management Corporation, El Capitan and Calex.

Given the findings regarding the failure of LAUSD staff, the Internal Auditor recommends that the School Board consider Superintendent Ruben Zacarias' failure to supervise the Belmont project in a diligent, professional and effective manner as part of his next scheduled performance evaluation.

6. Pursue Legal Action Against LAUSD's Professional Consultants Or Vendors: Commence civil legal actions against the following professional consultants or vendors for their breach of professional care or duty with regard to their respective roles at Belmont, and seek damages and/or restitution to the LAUSD:

- El Capitan, Inc.
- Ernesto Manuel Vasquez and McLarand, Vasquez & Partners, Inc.
- Law-Crandall, Inc.
- O'Melveny & Myers LLP
- Remedial Management Corporation

To preclude any real or perceived conflict of interest, the Internal Auditor recommends that these legal actions be initiated by outside counsel not previously involved in any fashion with Belmont, and that legal counsel be retained, following an appropriate competitive bid process, through a written retention agreement that precludes conflicts of interest.

7. **Negotiate With And/Or Pursue Legal Action Against The Belmont Developer:** Negotiate satisfactory resolution with, or failing to obtain a negotiated resolution, commence civil legal action against, Temple Beaudry Partners LLC for that party's failure to inform properly the California Department of Toxic Substances Control and the Los Angeles City Fire Department with regard to the environmental conditions and management of hazardous wastes, hazardous substances and hazardous materials on the Belmont property, and for that party's failure to meet its responsibility with regard to the proper and timely mitigation of the methane present at Belmont.

8. **Reform The Safety Team:** While well-intentioned as an emergency response to the discovery of hazardous material at the site of Jefferson Middle School, the role of the Safety Team in regards to Belmont and at all other school facility sites should be reformed to accomplish one or the other of two functions: (1) provide professional outside advice to the LAUSD professional staff, or (2) provide independent assessments of the performance of the LAUSD professional staff. These two functions cannot be performed at the same time by the same people. If the first assignment is made, their loyalty must be to the LAUSD, offering advice and counsel in the context of overall direction from the School Board and LAUSD professional staff, including maintenance of the attorney/client privilege for all communications between counsel and client. If the second assignment is made, all communications must be public in nature and made without regard to potential conflict with LAUSD professional staff views.

9. **Implement All Requirements Imposed By The California Department Of Toxic Substances Control With Regard To The Completion Of Belmont:** Complete the process approved by the LAUSD School Board and begun by the Safety Team with the California Department of Toxic Substances Control, and implement all requirements established for Belmont by that state agency, pursuant to the Voluntary Corrective Action Agreement, dated February 22, 1999. Concomitant with completing this process, and in furtherance of the School Board's Resolution dated February 23, 1999, negotiate with the California Department of Toxic Substances Control to obtain a formal and practical means by which LAUSD may work with the California Department of Toxic Substances Control to achieve compliance with the California Environmental Quality Act (Resources Code section 21151.8), as well as California's School

Facilities Act (Education Code section 17213), California's Hazardous Waste Control Law (Health & Safety Code Articles 11 and 11.5, sections 25221 *et seq.*, and sections 25242-25242.3, respectively) as well as California's Hazardous Substance Account ("Superfund") Act (Health & Safety Code section 25359.4), and other related statutes or regulations, in the acquisition, development and management of new and existing school facilities.

10. Cooperate with Any Further Belmont Investigations: Adopt and implement a policy of full cooperation with any further investigations of Belmont, with appropriate guidance (and sanction if required) to the LAUSD professional staff to implement this policy fully. This policy should apply with regard to any further efforts required by the Internal Auditor to complete this investigation of Belmont, as well as to the newly formed Belmont Commission, and to any outside law enforcement agency investigating Belmont.

CHAPTER 23

REFERRALS TO LAW ENFORCEMENT AGENCIES

Based upon the facts available to the Internal Auditor, his attorneys and investigative team, either through documents or personal interviews, the Internal Auditor has probable cause to believe that certain acts or omissions by certain persons or entities may constitute violations of criminal law, and as a result, the Internal Auditor has referred these matters to the appropriate law enforcement agency for further investigation and determination as to whether a criminal violation(s) has occurred. In light of the constitutional and statutory implications and protections required in criminal investigations, the Internal Auditor nor anyone on his legal and investigative teams will comment on any referral to a prosecutorial agency.

SORRY

ATTACHMENT 1

RESUMÉS

ARE NOT AVAILABLE IN

ELECTRONIC FORM

AT THIS TIME

SORRY

ATTACHMENT 2

AUTHORIZING RESOLUTION

IS NOT AVAILABLE IN

ELECTRONIC FORM

AT THIS TIME

SORRY

ATTACHMENT 3

ORANGIZATIONAL CHARTS

ARE NOT AVAILABLE IN

ELECTRONIC FORM

AT THIS TIME

ATTACHMENT 4

Glossary of Parties

LAUSD

Sidney Thompson	Superintendent (October 1992 to July 1997)
Reuben Zacarias	Superintendent (July 1997 to Present)
Richard Mason	General Counsel (1993 to Present)
Lisa Gooden (Resigned)	Assistant Director, Litigation Research (January 1996 to April 1998) Prior to 1996: Associate at O'Melveny & Myers LLP
Dominic Shambra (Retired)	Director, Planning & Development (1993 to 1998)
David Koch	Chief Administrative Officer (1998 to Present) Business Division (1989 to 1998)
Raymond Rodriguez	Admin. Coordinator, Planning and Development, (July 1995 to February, 1998) Director Project Management and Construction Branch (February, 1999 to Present)
Elizabeth Louargand	Director, Facilities Division (March 1995 to June 1999)
Rodger Friermuth	Facilities Project Manager II (1985 to 1999)
C. Douglas Brown	Director, Facilities Division (1990 to retired in1994)
Dr. Bonnie James	Director Facilities (retired 1993)
Robert Niccum	Director of Real Estate (1990 to 1998)
Elizabeth Harris (Retired)	Real Estate Agent/CEQA Officer (retired 1997)
Susie Wong	Director Environmental Health & Safety (1990 to 1996)
Hamid Arabzedeh	Director of Environmental Health & Safety (August 1997 to July 1998)
Dianne Doi	Deputy Director of Env. Health & Safety (October 1994 to November 1998) Deputy Director of Food Services (November 1998 to Present)

Glossary of Parties (cont.)

Richard Lui	Environmental Health & Safety Officer (1997 to Present)
Rosanne McGlohon	Senior Safety Officer (September 1993)

OUTSIDE COUNSEL

David Cartwright	O'Melveny & Meyers LLP
Lisa Gooden	(December, 1990 - January, 1996)
James Colbert	
Ed Szczepkowski	

ENVIRONMENTAL CONSULTANTS
ABB Environmental Services, Inc.
Ecology Control Industries
El Capitan Environmental Services
Environmental Support Technologies
Grayson Service
Intera, Inc.
Law/Crandall
Remedial Management Corporation
Sepich Associates/Methane Specialists

OTHER CONSULTANTS
Ernst & Young LLP
Coopers & Lybrand
Wedin Associates
Hanscomb
Daniel, Mann, Johnson & Mendenhall

DEVELOPER

Temple Beaudry Partners, LLC
Kajima Urban Development LLC (Managing Partner)
The Legaspi Company
Gateway Science & Engineering
Regent Partners, Inc.

Legal Counsel to Temple Beaudry Partners LLC
Latham & Watkins

Architect
McLarand, Vasquez & Partners, Inc.